

***United States Court of Appeals
for the Second Circuit***



APPENDIX

**Docket
No. 77-1491**

**In The
United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

— v —

**JAMES W. McGRATH, JON N. ENGLISH and RAYMOND
D. MASCIARELLI,**

Appellants.

**On Appeal From The United States District Court
For The Northern District of New York**

**JOINT APPENDIX FOR APPELLANTS,
McGrath, English and Masciarelli**

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JAN 28 1980

TABLE OF CONTENTS

	Page
Indictment No. 74-CR-142	1
Indictment No. 74-CR-144	4
Notice of Appeal (Jon N. English and Raymond D. Masciarelli)	5
Notice of Appeal (James W. McGrath)	6
Minutes of Stipulation of Disposition Re: English and Masciarelli	7
Information Re: Masciarelli and English	38
Docket Entries	39
Order on Mandate, dated 3-16-76	49
Letter, dated 6-22-76	50
Letter, dated 6-25-76	52
Letter, dated 7-1-76	54
Appellants' Computation of Time, Masciarelli, English and McGrath through 6-21-77	56
Transcript of Order Directing United States to Prepare Order (1-13-75)	58
Transcript Setting Forth that Hon. Edmund Port had to Prepare Order (3-10-75)	62
Letter from Dante M. Scaccia, Esq. to Hon. Edmund Port, dated 4-29-76	73
Letter from Charles W. Avery, Esq. to Hon. Edmund Port, dated 4-30-76	74
Transcript of U.S. Attorney Admitting Discovery Not Complete, dated 5-4-76	75
Letter from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to Charles Avery, Esq., dated 5-5-76	78

	Page
Letter from Arthur A. Chalenski, Jr. to Attorneys for Defendants, dated 5-12-76	79
Letters from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to Defendants' Counsel (4 letters) May 20-June 30, 1976	81
Lab Report, dated 5-18-76	82
Letter from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to Attorneys for Defendants, dated 7-1-76	83
Bill of Particulars and Discovery Information Submitted on Behalf of the United States in Response to Attorney for Defendant English, dated 5-5-76	85
Bill of Particulars and Discovery Information Submitted on Behalf of the United States in Response to Attorney for Defendant Masciarelli, dated 5-5-76	87
Bill of Particulars and Discovery Information Submitted on Behalf of the United States in Response to Attorney for Defendant McGrath, dated 5-5-76	89
Transcript of Hearing on Discovery Motions of 11-29-76 Re: First Speedy Trial Argument	91
Transcript of United States Opposition of First Speedy Trial Motion and Search Warrant Suppression Motion of 11-29-76	114
Decision on First Speedy Trial Motion, dated 11-29-76 ...	117
Transcript of Hearing on Discovery Motions Re: Government Expert	119
Transcript Re: Computation of Time Request; referred to Trial Judge, dated 1-31-75	120
Transcript Re: Motion for Speedy Trial, dated 3-4-75	123
Transcript Re: Motion for Speedy Trial, dated 3-10-75 ...	133
Request of Counsel for Appellants, dated 3-16-77	143

	Page
Letter from Clerk of U.S. District Court, James K. Evans to Charles W. Avery, Esq., dated 3-30-77	144
Computation of Time Calculated by U.S. District Court Clerk to 5-3-77	145
Transcript of Proceeding Before Hon. James T. Foley, Chief United States District Judge of 3-1-77	146
Affidavit in Support of Search Warrants of Robert R. Hazelwood, Special Agent, F.B.I., dated 6-17-74	149
Transcript of Decision on Search Warrant	160
Suppression Motion, dated 11-29-76	161a
Transcript of Denial of Motion of Wiretap Evidence on 4-27-77	162
Transcript of Representation to Hon. Howard G. Munson of McGrath - Masciarelli Conflict	163
Transcript of Denial of Appellant McGrath's Request that Entire Tape of Selected Tapes be Played	165

INDICTMENT NO. 74-CR-142.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)

Criminal No. 74-CR- 142

v.)

I N D I C T M E N T

FRANK S. CANNONE, STANLEY A. RAPPUCCI,)
THOMAS A. GAETANI, JON N. ENGLISH,)
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,)
~~ANTHONY R. SANTACROSE, JR.,~~)
RAYMOND D. MASCIARELLI, JAMES W. McGRATH,)
ANDREW J. QUINLAN and THOMAS J. ABBADESSA.)

Vio: 18 USC 2, 371,
1503, 1955.

COUNT I.

THE GRAND JURY CHARGES:

From about January, 1974 and continuously thereafter up to and including the 17th day of June, 1974, in the Northern District of New York and elsewhere, FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA, ANTHONY R. SANTACROSE, JR., RAYMOND D. MASCIARELLI, JAMES W. McGRATH, ANDREW J. QUINLAN, THOMAS J. ABBADESSA and others, unlawfully, wilfully and knowingly did conduct, finance, manage, supervise, direct and own a part of an illegal gambling business, said illegal gambling business involving book-making, that is the giving and accepting of line information, wagers and lay-off on sports events and horse races, in violation of the laws of the State of New York (New York Penal Law, Section 225.00 and following) in which said business was conducted; said illegal gambling business involved, during the period aforesaid, more than five persons including those named herein and others not named herein, whose identities are known to the Grand Jury and others not named herein whose identities are unknown to the Grand Jury who conducted, financed, managed, supervised, directed and owned a part thereof and said illegal gambling business remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of \$2,000.00 in a single day;

All in violation of Title 18, United States Code, Sections 2 and 1955.

COUNT II

THE GRAND JURY FURTHER CHARGES:

From about January, 1974 and continuously thereafter up to and including the 17th day of June, 1974, in the Northern District of New York

INDICTMENT NO. 74-CR-142.

and elsewhere, FRANK S. CANNONE, STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JON N. ENGLISH, JOSEPH N. MARUCA, ANTHONY R. SANTACROSE, JR., RAYMOND D. MASCIARELLI, JAMES W. McGRATH, ANDREW J. QUINLAN, and THOMAS J. ABBADESSA, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together with each other and with ANGELO A. BONTEMPO, DONALD GARREN, EUGENE D. SCHIAPPA, CARMEN DeLANZO, ROGER EVANEK, and JOYCE EVANEK, named as co-conspirators but not as defendants herein and with diverse other persons to the Grand Jury unknown to commit the following offense against the United States:

to unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own a part of an illegal gambling business as set forth in Count I herein, that is an illegal book-making business in violation of the laws of the State of New York in which said business was conducted and involving more than five persons who conducted, financed, managed, supervised, directed and owned part of said business which illegal gambling business remained in substantially continuous operation for a period in excess of thirty days, and had a gross revenue of \$2,000.00 in a single day, in violation of Title 18, United States Code, Section 1955.

OVERT ACT

In furtherance of the conspiracy and to effect the objects thereof, the defendants and co-conspirators performed the following overt act:

1. On or about the 8th day of March, 1974, in the Northern District of New York THOMAS A. GAETANI and STANLEY A. RAPPUCCI spoke with each other by telephone, and in that conversation discussed their bookmaking business;

All in violation of Title 18, United States Code, Section 371.

COUNT III

THE GRAND JURY FURTHER CHARGES:

On or about the 24th day of October, 1974, in the Northern District of New York, JOSEPH N. MARUCA and VINCENT N. CHRISTINA unlawfully, wilfully and knowingly, corruptly and by force did endeavor to influence, intimidate and impede Angelo A. Bontempo, a witness who had been subpoenaed and who had

INDICTMENT NO. 74-CR-142.

testified on October 23, 1974 before a Grand Jury then empaneled in and for the United States District Court for the Northern District of New York which Grand Jury was then investigating alleged violations of the United States Code concerning illegal gambling business;

that is JOSEPH N. MARUCA and VINCENT N. CHRISTINA by beating Angelo A. Bontempo with their fists did injure the person of Angelo A. Bontempo on account of his having attended and testified before said United States Grand Jury and did thereby corruptly endeavor to influence, obstruct and impede the due administration of justice;

Violation of Title 18, United States Code, Sections 2 and 1503.

A TRUE BILL

/s/ Richard Nichols
FOREMAN OF THE GRAND JURY

/s/ James M. Sullivan, Jr.
UNITED STATES ATTORNEY

INDICTMENT NO. 74-CR-144.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	)	Criminal No. 74-CR- <u>144</u>
v.	)	I N D I C T M E N T
RAYMOND D. MASCIARELLI, LAWRENCE SCHULTZ	)	Vio: 18 USC 2 and 1084(a)

COUNT I

THE GRAND JURY CHARGES:

From on or about the 12th day of April, 1974 to on or about the 24th day of April, 1974, in the Northern District of New York and elsewhere as set forth herein, RAYMOND D. MASCIARELLI being engaged in the business of betting and wagering, and LAWRENCE SCHULTZ unlawfully, wilfully and knowingly did use and did cause to be used wire communication facilities, that is the telephone, for transmission in interstate commerce between Munroe Falls, Ohio and Binghamton, New York of information assisting in the placing of bets and wagers on sporting events and contests; In violation of Title 18, United States Code, Sections 2 and 1084(a).

A TRUE BILL

/s/ Richard Nichols
FOREMAN OF THE GRAND JURY

/s/ James M. Sullivan, Jr.
UNITED STATES ATTORNEY

NOTICE OF APPEAL (Jon N. English and Raymond D. Masciarelli).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA)

v.)

JON N. ENGLISH)
RAYMOND D. MASCIARELLI)

Criminal No.

77-CR-71

74-CR-142

NOTICE OF APPEAL

Notice is hereby given that Jon N. English and Raymond D. Masciarelli, defendants above named hereby appeal to the United States Court of Appeals for the Second District from the final judgment entered in this action on the 22nd day of August 1977 and from all rulings on all pretrial motions in U.S. v. Cannone, et al, 74-CR-142.

August 22, 1977

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Attorney for Jon N. English
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United States District Court
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United States Courthouse and Federal Building
Syracuse, New York 13201
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NOTICE OF APPEAL (James W. McGrath).

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
 THOMAS A. GAETANI, JON W. ENGLISH, JOSEPH
 W. MARUCA, VINCENT N. CHRISTINA, ANTHONY
 R. SANTACROSE, JR., RAYMOND D. MASCIARELLI
 JAMES W. MCGRATH, ANDREW J. QUINLAN AND
 THOMAS. A. ABBADESSA

:
 : NOTICE OF APPEAL TO
 : COURT OF APPEALS FROM
 : JUDGMENT OF A DISTRICT
 : COURT

: 74-CR-142

Notice is hereby given that James W. McGrath, the defendant
 above named, hereby appeals to the United States Court of Appeals
 for the Second Circuit from a judgment of conviction entered in
 this action on the 20th day of June, 1977.

June 20, 1977

JAMES P. SHANAHAN
 Attorney for Defendant
 422 University Building
 Syracuse, New York

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

- against -

RAYMOND D. MASCIARELLI and
JOHN ENGLISH,

Defendants.

-----x

Syracuse, New York
June 22, 1977, 11:00 a.m.

Before:

HONORABLE HOWARD MUNSON,

U. S. District Judge

Appearances:

ARTHUR A. CHALINSKI, ESQ.
Assistant United States Attorney

DANTE M. SCACCIA, ESQ.
Attorney for Defendant Masciarelli

CHARLES W. AVERY, ESQ.
Attorney for Defendant English.

Copy
U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

FEB 20 1979

AT _____ O'CLOCK _____ M.
J. R. SCULLY, Clerk
ALBANY

74 CR 142

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

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2

MR. SCACCIA: We have a stipulation to put on the record with permission of the Court, your Honor.

MR. CHALINSKI: I believe this would be best if it was done one at a time.

MR. SCACCIA: I have no objection.

THE CLERK: United States of America v. Raymond D. Masciarelli.

MR. CHALINSKI: The government has prepared an information in this case charging a violation of Title 18, United States Code, Section 1084(a), which is a felony, and at this time would like to file the information.

MR. SCACCIA: I have a copy, your Honor. I have no objection.

I have executed with my client three duplicate copies of the waiver of indictment and the information and we consent to the filing, your Honor.

I understand the information with respect to Criminal No. 77 CR 70.

THE COURT: You waive the reading of the information?

MR. SCACCIA: We do. We waive the reading.

At this time with permission of the Court, the defendant Raymond D. Masciarelli wishes to enter a plea of guilty to the information now filed in full

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

3

satisfaction --

MR. CHALINSKI: I believe there has to be a waiver of indictment first before we can talk about a plea.

MR. SCACCIA: I just stated for the record that there is a waiver of indictment and it has been filed.

It is executed by the defendant, signed by me and filed with the clerk of the court.

THE COURT: You waive the reading of the information?

MR. SCACCIA: Yes.

THE COURT: Mr. Masciarelli, you understand that you would be entitled under ordinary circumstances to go before the grand jury or to have the grand jury consider the violations that are charged in this information and that that grand jury would consist of not more than 23 and not less than 16 people, and it would take the vote of at least 12 of those people in order to indict you.

Do you understand that?

DEFENDANT MASCIARELLI: Yes.

THE COURT: Do you understand that in accepting this information you waive having this done in the grand

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

4

jury in the Northern District of New York?

DEFENDANT MASCIARELLI: Yes.

THE COURT: Anything further, Mr. Chalinski?

MR. CHALINSKI: That is all, your Honor.

Perhaps the finding of the grand jury based on probable cause.

THE COURT: Mr. Masciarelli, you also understand that any indictment the grand jury brought down would have to be based upon probable cause.

DEFENDANT MASCIARELLI: Yes.

THE COURT: At this time I will order the filing of the information and ask you, Mr. Masciarelli, how do you plead?

MR. SCACCIA: On behalf of defendant Masciarelli, your Honor, we enter a plea of guilty to the information 77 CR 70 now filed with the Court in full satisfaction of all counts in the indictments 74 CR 142 and 74 CR 144 insofar as the defendant Masciarelli is concerned.

It is in full satisfaction of all the charges pending against the defendant Masciarelli contained in those two described indictments and all the counts in those indictments, your Honor.

Furthermore, it is based upon this waiver of information, waiver of the indictment and the information

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

5

filed charging the violation of Title 18 United States Code, Section 1084(a), which is a related offense.

More specifically, we are preserving our right to appeal the denial of the suppression motions. I understand the government has the full text of the stipulation which we would like now, with the permission of the Court, to be read into the record.

MR. CHALINSKI: Your Honor, the stipulation in this case and the only stipulation entered into is that the government agrees under Rule 11 that the maximum sentence of imprisonment if imposed shall be that the defendant shall be imprisoned not more than six months.

The government and the defendant stipulate subject to the approval of the district court that the defendant pleads guilty to Title 18, United States Code, Section 1084(a); the right of appeal, if any, from any and/or all pretrial motions including the suppression issue in U. S. v. Canone, Northern District of New York No. 74 CR 142 is preserved; that the guilty plea may be withdrawn upon the reversal of any pretrial motions in the Court of Appeals; the government consents to the dismissal of all counts in indictment 74 CR 142 as to this defendant.

If the Court of Appeals affirms, this stipulation

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

6

is entered into by the parties under authority of
U. S. v. Faruolo, 504 F. 2d 490, Second Circuit 1974;
third; that the government will consent to a stay of
execution pending the appeal to the Second Circuit Court
of Appeals provided such appeal is diligently prosecuted.

The government will move imposition of sentence
without recommendation.

MR. SCACCIA: I have one addition.

The government inadvertently left out the
fact it includes --

MR. CHALINSKI: The government will consent
to dismissal of both indictments 74 CR 142 and 74 CR 144
as to this defendant, if the Court of Appeals affirms.

THE COURT: Do you wish to proceed at this
time or you have another defendant, do you not?

MR. CHALINSKI: There is another defendant
and another information, your Honor.

THE COURT: Any objection to filing the informa-
tion with regard to another defendant?

MR. CHALINSKI: Not at all, your Honor.

THE CLERK: United States of America. v.
John English.

MR. CHALINSKI: The government has prepared
an information charging John N. English with violating

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

7

nsrp

Title 13, United States Code, Section 1084(a) which is a felony and at this time would like to file the information.

THE COURT: Mr. Avery, you are representing Mr. English?

MR. AVERY: That is correct.

THE COURT: Do you have a copy of the information?

MR. AVERY: I do.

THE COURT: Do you waive the reading of the information?

MR. AVERY: Yes.

THE COURT: Mr. English, you understand that the violation charged in that information would ordinarily be presented to a grand jury in the Northern District of New York and that that grand jury would consist of not more than 23 and not less than 16 people and that that grand jury, in order to indict you for the violation charged in this information, would have to vote by at least 12 people to bring in an indictment and that indictment would have been based upon probable cause.

Do you understand that?

DEFENDANT ENGLISH: Yes.

THE COURT: Do you understand that if this information is filed that you will waive the presentation

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

8

of this case to a grand jury.

Do you understand that?

DEFENDANT ENGLISH: Yes.

THE COURT: You are waiving your rights in that regard?

DEFENDANT ENGLISH: Yes.

THE COURT: I will order the information filed.

Anything further, Mr. Chalinski?

MR. CHALINSKI: The waiver of indictment forms are presently being signed, your Honor.

THE COURT: Mr. Chalinski, is there a stipulation with regard to this information?

MR. CHALINSKI: That is correct, your Honor.

The same stipulation as previously. The government agrees that the maximum sentence under Rule 11 for imprisonment if imposed shall be that the defendant shall be imprisoned not more than six months.

The government and the defendant stipulate, subject to the approval of the district court, that the defendant pleads guilty to Title 18, United States Code, Section 1084(a); that the right to appeal, if any, from any and/or all pretrial motions including the suppression issues, in U. V. v. Canone, 74 CR 142 numbering in the Northern District of New York is preserved; that the guilty

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

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9

plea may be withdrawn upon the reversal of any pretrial motion in the Court of Appeals and that the government consents to the dismissal of all counts in indictment 74 CR 142 as to this defendant if the Court of Appeals affirms.

This stipulation is entered into by the parties under the authority of U. S. v. Faruolo, 504 F. 2d 490, Second Circuit, 1974.

We also agree that the government will consent to a stay of execution pending the appeal to the Second Circuit Court of Appeals provided such appeal is diligently preserved.

Fourth, we agree that the government will move imposition of sentence without recommendation.

MR. SCACCIA: I think the government meant stay of execution of the sentence.

THE COURT: Is that correct?

MR. CHALINSKI: That is correct.

THE COURT: It is Title 18, Section 1084(a), is that correct?

MR. SCACCIA: Yes.

MR. AVERY: Right.

THE COURT: How do you wish to plead?

MR. AVERY: The defendant will enter a plea

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

10

of guilty to the related offense of the violation set forth in the information Criminal No. 77 CR 71, that is a related offense to those counts in indictment No. 74 CR 142 in full satisfaction of all of the counts in indictment No. 74 CR 142 based upon the agreement, stipulation previously read into the record by the government.

THE COURT: Mr. Masciarelli and Mr. English, I would like to inform you that if you do not plead guilty to the counts in the information 77 CR 70, that you would have each of the following rights:

You would have the right to enter a plea of not guilty and to persist in that plea. You would have the right to a speedy and public trial by an impartial jury of 12 people or to a trial by the Court without a jury if you consented to waiving a trial.

Upon any trial, whether before a jury or the Court, you would be presumed to be innocent under the law and the burden would be upon the government to establish your guilt beyond a reasonable doubt and that would have to be to the satisfaction of all 12 of the jurors or to the satisfaction of the Court if you waive a jury trial.

If you had a jury trial the verdict must be unanimous in order to find you guilty. Upon the trial you would have the right to the assistance of a lawyer. You would

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

11

have the right to confront, that is to see and to hear any of the witnesses against you and you would have the right to cross-examine or have them cross-examined on your behalf.

You would have the right to either remain silent or testify in your own behalf but you could not be compelled to incriminate yourself nor could you be compelled to testify at all.

Your silence could not be held against you in any way and no inference of guilt could be held against you upon your failure to testify.

You would have the right to use the subpoena or any other process of this court to compel witnesses to attend the trial or obtain documentary evidence which you might wish to offer in your defense.

If the Court accepts your plea of guilty, you would waive or give up all of those rights and there would not be a trial of any kind.

The Court would have the same right to sentence you as if you were found guilty after trial on the same counts. After the clerk enters your plea, I will question you as to whether you are pleading guilty freely and voluntarily, any promises made, any threats or force used to induce you to plead guilty, whether you are under the influence

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

12

of any kind of narcotics, pills or drugs which might in any way impair you, and I will ask you about the nature of the charges against you and whether you did in fact commit the crimes charged in this information.

I do that to determine whether there is a factual basis of this plea. I want you to understand if you answer any of my questions under oath and those answers are not under oath or merely answer questions in the presence of counsel they might be used against you for perjury or making a false statement.

I expect that each of you has fully discussed the case with your attorney and he has advised you of your rights and the fact basis of your plea and the consequences of pleading guilty.

I shall also interrogate your counsel in that regard.

I want you to understand that a plea of guilty constitutes a waiver of your right against self-incrimination. I want to warn you at this time that you should not plead guilty unless you are in fact guilty of the charge made against you in this count in this information.

You understand that I am going to do that, Mr. Masciarelli?

DEFENDANT MASCIARELLI: Yes, sir.

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

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13

THE COURT: Mr. English.

DEFENDANT ENGLISH: Yes, sir.

THE COURT: Do you understand what I have said about your rights to a speedy trial by jury or by the Court?

DEFENDANT MASCIARELLI: Yes, sir.

THE COURT: Your rights to counsel and so forth?

DEFENDANT MASCIARELLI: Yes.

DEFENDANT ENGLISH: Yes.

THE COURT: Mr. Doggett, take the plea.

THE CLERK: Mr. Masciarelli, do you still wish to plead guilty to the information?

DEFENDANT MASCIARELLI: Yes.

THE CLERK: Mr. English, do you still wish to plead guilty?

DEFENDANT ENGLISH: Yes, sir.

THE COURT: Mr. Masciarelli, what is your full name?

DEFENDANT MASCIARELLI: Raymond Masciarelli.

BY THE COURT:

Q Where did you go to school?

A Binghamton North High.

Q How far did you go in school?

A I finished high school.

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

Masciarelli

14

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q Do they reside with you?

A Yes.

Q Are you responsible for their support and maintenance?

A Yes, sir.

Q What type of work are you presently engaged in?

A I am unemployed right now.

Q Do you use narcotics?

A No.

Q Have you ever used them?

A No.

Q Are you presently under the care of any doctor or physician?

A No.

Q Are you taking any kind of medicine or pills?

A No.

Q Have you had anything alcoholic to drink this morning?

A No.

Q Your lawyer is Mr. Dante Scaccia?

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

Masciarelli

15

A Yes.

Q Was he selected by you?

A Yes.

Q Are you satisfied with him?

A Yes.

Q Has he advised you of your rights?

A Yes, he did.

Q Did you hear and understand what I told you
a few moments ago about your rights?

A Yes.

Q Have you been provided with a written acknowledgment
of your rights?

A Yes.

Q Have you read it?

A Yes, I did.

Q Have you signed it?

A Yes.

Q Did you understand it when you read it?

A Yes.

Q Is there anything that you would like to ask
the Court at this time about your rights?

A No.

Q Has your lawyer or any assistant U. S. attorney
or any government agent or anyone else made any promise

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

Masciarelli

16

to you that you would be treated leniently or any other promise to induce you to plead guilty other than that which was stipulated to earlier?

A No.

Q Has any force or threats been made or used against you to induce you to plead guilty?

A No.

Q Does your willingness to plead guilty result from some discussion between your lawyer and the government?

MR. SCACCIA: Under Rule 11.

Q There has been a discussion between counsel, has there not?

A Yes.

Q You have been advised of that, have you not?

A Yes.

THE COURT: Is there anything, Mr. Chalinski, that has been discussed with Mr. Scaccia or Mr. Masciarelli other than what is contained in the stipulation?

MR. CHALINSKI: The stipulation as read is the entire stipulation as it stands at this time, your Honor.

THE COURT: Can you at this time, Mr. Chalinski, tell the Court what the basis of the evidence is that

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

narp

17

would be sufficient to prove the defendant's guilt beyond a reasonable doubt for this count?

MR. CHALINSKI: Your Honor, as to this defendant, can we go off the record?

THE COURT: Is there some problem, Mr. Chalinski?

MR. CHALINSKI: Yes, your Honor.

THE COURT: Off the record.

(Discussion off the record)

THE COURT: The confusion, I guess, developed, Mr. Chalinski, because of the two defendants.

MR. CHALINSKI: That's correct.

THE COURT: I am talking about the defendant Joan English.

Can you give what the evidence is that the government would have that is sufficient to prove his guilt beyond a reasonable doubt?

MR. CHALINSKI: As to the defendant Masciarelli, your Honor, the government intercepted telephone calls over a telephone subscribed to by Raymond Fordney. We have the evidence that he used the initials R.F. and was present at the store where the phone was installed.

He conducted a business of wagering, receiving wagers and receiving line information from other persons, making wagers from other persons.

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

18

That was done on an ongoing term. During the period of that time the defendant made an interstate telephone call to Lawrence Schultz, not named as a defendant in this indictment, and from Lawrence Schultz obtained line information on wagering bets.

THE COURT: Has the government made any threats to induce the defendant to plead guilty?

MR. CHALINSKI: No, your Honor.

THE COURT: The promises that were made are contained in the stipulation?

MR. CHALINSKI: That's correct.

THE COURT: Can you tell us at this time, with regard to that stipulation and with regard to the violation that is charged, what the possible penalties are?

MR. CHALINSKI: The maximum penalties would be a six month imprisonment as agreed or a fine of \$10,000.

BY THE COURT:

Q Mr. Masciarelli, you have been informed about the possible penalties. Do you still wish to plead guilty?

A Yes.

Q Are you pleading guilty because you are guilty and for no other reason?

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

19

A Yes.

Q You understand the nature of the charges against you, that you are charged with being engaged in the business of wagering and willfully and knowingly did use and did cause to use a wire communication facility, that is, a telephone, for the transmission of interstate commerce between Binghamton and Syracuse, Monroe Falls, for information assisting in the placing of bets and wagers for sporting events and contests.

With regard to what Mr. Chalinski said with regard to the proof, is that correct or not?

A Yes.

THE COURT: Mr. Scaccia, what is your knowledge with regard to the government's statement of fact?

MR. SCACCIA: I have been provided, pursuant to discovery with, both voluntarily and unvoluntarily, a transcript of the wiretap communications that Mr. Chalinski has reverted to and I have heard the actual recordings developed from the tape of that interception and I know it exists.

THE COURT: You have had considerable experience as a trial counsel, have you not?

MR. SCACCIA: I have had experience, your Honor.

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

20

THE COURT: You were an assistant U. S. attorney?

MR. SCACCIA: Yes, your Honor.

THE COURT: You are presently engaged in the trial of various litigated matters and you have for over 20 years?

MR. SCACCIA: Yes, your Honor.

THE COURT: Have you spent considerable time with the defendant?

MR. SCACCIA: I have, your Honor.

THE COURT: Have you advised him of his rights and the nature of the charges against him and the consequences of pleading guilty?

MR. SCACCIA: I have, Judge.

THE COURT: You have had considerable discovery of the government's evidence?

MR. SCACCIA: I have.

THE COURT: You were also present during the trial of one of the co-defendants on the other indictment?

MR. SCACCIA: Portions of the trial, yes.

THE COURT: Have you made any promises or threats to induce the defendant to plead guilty?

MR. SCACCIA: I have not.

THE COURT: Are you satisfied that he is

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

21

pleading guilty freely and voluntarily with an understanding of the nature of the charges against him and the consequences of those charges?

MR. SCACCIA: Yes.

THE COURT: Do you know of any defense that defendant has?

MR. SCACCIA: None other than those asserted and merged in the stipulation now read into the record, your Honor.

THE COURT: Do you know of any other reason why he should not plead guilty at this time?

MR. SCACCIA: No, your Honor.

THE COURT: The Court will at this time accept the agreement and the plea of guilty and order a pre-sentence report.

MR. SCACCIA: May the defendant be continued in his own recognizance?

THE COURT: What is the situation?

MR. CHALINSKI: He is on bail at this time.

MR. SCACCIA: There has been some question. I would ask the Court whatever that bail arrangement be, that that be continued.

MR. SCACCIA: We have no objection, your Honor.

THE COURT: The defendant has appeared in

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

22

this court on innumerable occasions. It seems to me that he will re-appear. Therefore, I will release him on his own recognizance at this time.

MR. SCACCIA: Thank you.

THE COURT: You will make arrangements for the return of the bail.

MR. SCACCIA: Yes.

BY THE COURT:

Q Mr. English, where do you presently reside?

A 124 Oak Hill Avenue, Endicott, New York.

Q Date of birth?

A March 14, 1940.

Q How far did you go into school?

A Tenth.

Q Was that in Binghamton?

A Endicott.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, I do, five.

Q Do they reside with you?

A Yes, they do.

Q Are you taking care of their maintenance and so forth?

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

23

A I am on Social Security disability and my wife works.

Q They reside in your household and are cared for by you and your wife?

A Yes.

Q Do you use narcotics?

A No.

Q Have you ever used them?

A I had an operation. They gave me something.

Q Not as a situation where you go out and buy them?

A No.

Q Are you presently under the care of any physician?

A Yes.

Q Who is that?

A I am under the care of two. Herbert Walling is a surgeon and Dr. Spring from Sussannah Medical.

Q Are you taking any kind of medicine at this time?

A Just vitamin pills.

Q No kinds of drugs or anything of that nature?

A No.

Q Your lawyers is Mr. Charles Avery from Auburn,

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

24

New York?

A Yes, sir.

Q Was he appointed by the court or selected
by you?

A Appointed by the court.

Q Are you satisfied with Mr. Avery?

A Yes, I am.

Q Has he advised you of your rights?

A Yes.

Q Did you hear and understand what I told you a
few moments ago about your rights?

A Yes.

Q You have read and signed a written acknowledge-
ment of your rights?

A Yes.

Q When you read it did you understand it?

A Yes.

Q Is there anything that you would like to ask
the Court about at this time regarding your constitutional
rights?

A No, sir.

Q Has your lawyer or any assistant U. S. attorney

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nserp

English

25

or any government agent or anyone else made any promise to you that you would be treated leniently or any promise to induce you to plead guilty other than the stipulation that Mr. Chalinski read earlier?

A No, sir.

Q Has any force or threats been used or made against you to induce you to plead guilty?

A No.

Q I take it that your willingness to plead guilty results in part from some discussion between your attorney and the government counsel, does it not?

A Yes.

Q You understood what Mr. Chalinski said in that stipulation, did you not?

A Yes.

Q Is that in conformity with your understanding of what your lawyer discussed with the U. S. attorney?

A Yes, sir.

Q Can you tell me what you did with regard to Count One of this information?

Let me state to you, first, Mr. English, that you are charged with being engaged in the business of wagering, willfully and knowingly used and caused to be used wire communication facilities for transmission in

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsr,

English

26

interstate commerce between Binghamton, New York and Sara, Pennsylvania, of information assisting in the placing of bets and wagering on sporting events and contests.

Tell me what you did do with regard to that charge.

A I talked to Andrew Quinlan. He resides in Sara, on numerous occasions.

Q What did you talk to him about?

A Betting and line information.

Q Was this with regard to wagers that might be made with respect to sporting events and contests?

A Yes.

Q THE COURT: Mr. Chalinski, what is the government's proof with regard to the defendant's guilt beyond a reasonable doubt?

MR. CHALINSKI: We did not intercept the calls to Sara, Pennsylvania.

We did intercept at 729-1401 subscribed to by Thomas Gatone in which they discussed line information, both to him -- and exchanged bets both ways.

In addition, at the location where the defendant was intercepted, the phone was located in Room 4 of the motel. We received almost daily calls from that phone to the Gatoni and return calls showing

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

27

through that regularity of calls that there was a book-making business operating at Room 4, Vista Motel, and that there was a regular exchange of line information and lay-off betting to Catone to the Room 4 Vista Motel phone.

Our information shows the defendant English was the person who paid the rent for that Room 4 and that he was present when calls were made, betting related calls.

BY THE COURT:

Q Mr. English, were the calls to Mr. Quinlan made to Sara, Pennsylvania?

A Yes. I guess so.

Q Were they made in that room in the Vista Motel?

A Possibly. I can't remember back that far.

Q Were they made from someplace in the State of New York?

A Yes.

THE COURT: Mr. Chalinski, has the government made any threats with regard to Mr. English?

MR. CHALINSKI: No.

THE COURT: It has made promises?

MR. CHALINSKI: As read into the record.

THE COURT: Has the government made any

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

28

promises not contained in that stipulation?

MR. CHALINSKI: No promises not contained in the stipulation which are not in effect at this time, your Honor.

THE COURT: What are the penalties that the defendant would subject himself to?

MR. CHALINSKI: Pursuant to Rule 11, maximum imprisonment term of six months and/or maximum fine of \$10,000.

THE COURT: Now that you have been informed of that penalty, do you still wish to plead guilty?

DEFENDANT ENGLISH: Yes.

BY THE COURT:

Q Are you pleading guilty because you are guilty and for no other reason?

A Yes.

THE COURT: Mr. Avery, you have been a district attorney and a trial counsel for a number of years, have you not?

MR. AVERY: That is right.

THE COURT: You have spent considerable time with this defendant?

MR. AVERY: A great deal of time.

THE COURT: Have you advised him of his rights

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

English

29

and the nature of the charges against him and the possible consequences of pleading guilty?

MR. AVERY: I have.

THE COURT: Have you had discovery of the government's evidence?

MR. AVERY: Yes.

THE COURT: That was considerable, was it not?

MR. AVERY: Yes.

THE COURT: Have you made any promises or any threats to induce the defendant to plead guilty?

MR. AVERY: Nothing except as contained in the record and the stipulation as read by the assistant U. S. attorney.

THE COURT: Are you satisfied that Mr. English is pleading guilty freely and voluntarily with an understanding of the nature of the charges contained in the information and possible consequences of the plea?

MR. AVERY: I am.

THE COURT: Do you know of any defense that the defendant may have to the charges?

MR. AVERY: None except those pretrial motions which are made and preserved by the stipulation.

THE COURT: Do you know of any reason why he should not plead guilty at this time?

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

30

MR. AVERY: None.

THE COURT: At this time the Court will order the entry of a plea of guilty on behalf of the defendant John N. English.

What is Mr. English's bail situation?

MR. CHALINSKI: He is also presently out on bond, your Honor.

The government has no objection to the bond being continued.

MR. AVERY: I would ask that he be released on his own recognizance.

THE COURT: Mr. English has appeared in this court many times voluntarily.

At this time the Court will order him released on his own recognizance and you may make arrangements for the return of whatever the bail is.

I will order a pre-sentence investigation.

Mr. Chalinski, you mentioned earlier there was to be a stay until the Second Circuit has ruled on another case.

MR. CHALINSKI: It will be a stay of execution of sentence. We would consent to it.

Your Honor would of course have to grant it. There has been no sentence yet so there will be no stay.

MINUTES OF STIPULATION OF DISPOSITION
Re: English and Masciarelli.

nsrp

31

THE COURT: I will not set a date at this time for sentencing. I will await the presentence report.

MR. AVERY: In that connection, may I make a request that the sentencing date be at least after August 1.

MR. SCACCIA: I have no objection on behalf of Mr. Masciarelli.

THE COURT: It probably won't be before then in any event and we will see to it that it is not. Same for defendant Masciarelli.

MR. SCACCIA: May I make a request of the Court as to whether the Court approves of the proposed agreement as put on the record by the attorney for the government, as well as the attorney for the defense under Rule 11, or would the Court prefer to wait for the receipt of the presentence report.

THE COURT: That is what I am frowning about.

Insofar as I know now, the Court would approve the stipulation. However, I would await the report.

MR. SCACCIA: I have no objection.

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INFORMATION Re: Masciarelli and English.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

V.

RAYMOND D. MASCIARELLI

Criminal No. 77-CR- 70

INFORMATION

[Vic: 18 USC 1084(a)]

COUNT I

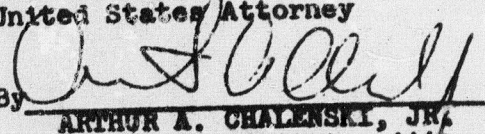
THE UNITED STATES ATTORNEY CHARGES:

From on or about the 12th day of April, 1974 to on or about the 24th day of April, 1974, in the Northern District of New York and elsewhere as set forth herein, RAYMOND D. MASCIARELLI, being engaged in the business of ^{WAGERING, UOC} ~~betting~~, and Lawrence Schultz, not named as a defendant herein, unlawfully, wilfully and knowingly did use and did cause to be used wire communication facilities, that is the telephone, for transmission in interstate commerce between at and about Munroe Falls, Ohio and Binghamton, New York of information assisting in the placing of bets and wagers on sporting events and contests.

In violation of Title 18, United States Code, Section 1084(a).

PAUL V. FRENCH
United States Attorney

By


ARTHUR A. CHALENSKI, JR.
Assistant United States Attorney

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

'74-CR 142

D. C. Form No. 100 Rev.

D. C. Form No. 100 Rev.		ATTORNEYS
TITLE OF CASE		
THE UNITED STATES		For U.S.:
vs.		James M. Sullivan, Jr.
		Eugene Welch
		<i>Dr. Fove</i>
FRANK S. CANNONE - 124 Front St, Binghamton		
STANLEY A. RAPPUCCI - 708 Front St, Vestal		
THOMAS A. GAETANI - 52 Rotary Ave, Binghamton		
JOHN N. ENGLISH - 124 Oak Hill Ave, Endicott		
JOSEPH N. MARUCA - 106 Loder Ave, Endicott		
VINCENT N. CHRISTINA - 403 Prescott Rd, Endicott		
ANTHONY R. SANTACROSE, JR. - 607 West Main St, End.		For Defendant:
RAYMOND D. MASCIARELLI - 4115 Felters Rd, Bing.		Dante Scaccia-R. Masciarelli
JAMES W. McGRATH - 229 Chenango St, Bing.		" " J. McGrath
ANDREW J. QUINLAN - 118 Vista Drive, Sayre, Penna.		
THOMAS J. ABBADESSA - 42 Clinton St, Bing.		

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title					
Sec.					

*I certify that
 This is a true copy
 Attest 4/17/76
 Clerk, U.S. District Court
 By: [Signature]
 Deputy

DATE	PROCEEDINGS
1974	
11/18	Filed Indictment in vio: 18 USC 2, 371, 1503, 1955 - Gambling, Conspiracy, and Obstruction of Justice 3 counts JS 2
11/18	Warrants Issued.
11/22	Trans. appearance bond from Mag. #52826-Cannone-Sur. Perny Lane \$1000.00
	Trans. " " " " "Reppucci - Sur. Patricia Reppucci \$1,000.00
	Trans. app. bond from Mag. 52826 - Gaetani -Sur. P. Reppucci, \$1000.00
	Trans. app. bond from Mag. 52826-English-Sur. Norma Neira \$1000.00
	Trans. app. bond from Mag. 52826-Santacrose, Jr. self surety \$100000
	Trans. app. bond from Mag. 52826-Masciarelli, self.sur. \$500.00
	Trans. app. bond from Mag. 52826-McGrath-self surety \$100.00
	Trans. app. bond from Mag. 52826-Quinlan-self surety \$100.00
	Trans. app. bond from Mag. 52826-Abbadessa-self surety \$100.00
11/25	Filed executed Warrant of Arrest for Cannone, Rappucci, Gaetani, English, Maruca, Christina, Santacrose, Jr., Masciarelli, McGrath, Quinlan, Abbadessa
11/25	Trans. app. bond from Mag. 52826-Joseph Muraca, Surety-Public Service Mutual Ins. Co.

DOCKET ENTRIES.

DATE	PROCEEDINGS
1/29/74	Filed Notice of Appearance on behalf of Deft. James W. McGrath
"	" " " " " " " " Raymond Masciarelli
12/3	Filed copy of Notice of Motion for Application for Bail and/or Reduction of bail for deft. Vincent N. Christina with supporting affidavit.
12/3	Filed Affidavit in Response to V. Christina's Motion for reduction of bail
12/5	Filed Amended Notice of Motion and Supporting Affidavit for Deft. Vincent Christina for reducing bail for 12/10/74.
12/10/74	All defts. arraigned and plead not guilty. Motions to be made returnable at Syracuse on 1/13/75. Motion papers are to be filed with the Clerk on or before 12/24/74, and answers on or before 1/7/75, with copies of all papers to Judge Port. No motions for discovery, unless alleged that prior to motions material was demanded and refused. All defendants continued on bail except Vincent Christina.
12/10/74	Motion for the reduction of bail for Vincent Christina. Bail reduced to \$25,000. 10% may be deposited in cash. Restricted to NDNV.
12/10/74	Filed Appearance Bond, Bail Reform Act: Vincent N. Christina, \$2,500 cash surety; Vincent N. Christina.
12/16	Filed Notice of Readiness for trial
12/23	Filed Motion for Bill of Particulars - Andrew J. Quinlan
12/24	Filed Notice of Motion - Demand for Bill of Particulars & Supporting affidavit.
2/26	Filed Notice of Motion for Discovery and Bill of Particulars for an Order directing U.S. Atty. to make available information requested, severance of Count 3 from the remainder of indictment, etc.
2/26	Filed Notice of Motion for Discovery and Bill of Particulars for an Order directing U. S. Atty. to make available information requested, severance of Count 3 from the remainder of indictment, etc.
12/27	Filed Notice of Motion and Affidavit for Maruca and Rappucci for Order directing U. S. Atty to make available information requested, severance of Count 3 from the remainder of indictment, etc.
10/75	Filed Government's response to motion by Atty. Remo. A. Allio
10/75	" " " " " " " " Atty. M.J. DeSisti
10/75	Filed Government's response to discovery motion by Atty. Harold J. Borean
1/13/75	Motions for discovery and Inspection, Bill of Particulars, Severance, etc granted as to the extent as supplied by the Gov't. Gov't. is directed to permit defendants to hear the tapes of interception. Count 3 is severed for trial from Counts 1 & 2. E. Welch is directed to submit an Order and directed to provide material within ten days. Motion for polygraph test by Mr. Allio - denied. No motions have been made by deft. English. Eugene Welch is directed to answer whether or not the person in question is a regular Asst. U. S. Atty. or a member of the Strike Force.
1/28/75	Notice of Motion and Affidavit seeking an Order for case to be removed from ready calendar. for defts. Stanley Rappucci & Joseph Maruca
1/28	Letter from Atty. Boreanaz to Judge MacMahon re: Motion
1/29/75	Filed Motion and Affidavit seeking an Order directing the case herein be removed from ready calendar for Deft. Raymond D. Masciarelli.
1/30/75	Filed Notice of Motion and affidavit seeking an Order directing case be removed from ready calendar for Deft. Cannone, Gaetani, Abbadessa, Christina and Santacrose, Jr.,
3/4/75	Hold subject to Judge Port's rulings.
10/75	Judge to prepare Order - Government has 15 days to submit items agreed up on January 13, 1975 at Auburn. Off the Albany Calendar and to be first on May Calendar at Auburn.

DOCKET ENTRIES.

DATE	PROCEEDINGS
3/5/75	Filed transcript of matters on Calendar call on March 4, 1975 At Albany. (74-CR-144)
3/13	Filed Order signed by Hon. Edmund Port, severing Count 3 of Indictment 74-CR-142, etc.
3/28/75	Filed Notice of Motion, Affidavit and Memo of Law for April 14, 1975 at Syracuse for an Order vacating third mandate of this Court's Order dated 3/11/75.
4/9/75	Filed reply affidavit by Remo Allio, Esq. for Anthony Santacrose.
4/14/75	Filed envelope containing material submitted for in-camera examination by the Court.
4/14/75	Filed Affidavit in reply to Government's motion to vacate Order re: Disclosure of Government's witnesses by Atty. DeSisti for defendant Andrew J. Quinlan.
4/14/75	Motion by U. S. for an Order vacating the third mandate of Court dated March 11, 1975 requiring pre-trial disclosure of the gov't. witnesses-- Judge to draw an Order.
4/24/75	Filed Order signed by Judge Port requiring Gov't. to supply names and addresses of all Gov't. witnesses.
5/2/75	Filed Order signed by Judge Port amending order of 3/13/75, Govt. witnesses to be named before May, 9.
5/8/75	Filed Notice of Appeal on Order dated March 11, 1975. Forwarded copy to Clerk, U.S. COURT OF APPEALS.
5/8/75	Judge Port directs that Mr. Welch file an Order to Show Cause made returnable on Tuesday May 13, 1975 at 4:00 P.M. at Auburn, N.Y. so that all defts. have had proper notice. The Order to Show Cause is to be served not later than 6:00 P.M. Today.
5/8/75	Filed Notice of Motion and Affidavit in support of Govt. motion for stay pending appeal.
5/8/75	Filed Order to Show Cause
5/13/75	Filed Certificate of Service of Order to Show Cause
5/12/75	Filed transcript of proceedings held April 14, Syracuse.
5/13/75	Motion for a stay pending appeal - granted. Trial is adjourned until 15 days after final ruling of CCA, 2nd Cir. Orders of March 11 and May 1, 1975 are stayed. Govt. to submit Order. (74CR144)
5/19/75	Filed transcript of proceedings held January 13, 1975 at Syracuse.
5/19/75	Filed Order signed May 15, 1975 by Judge Port ordering case from the trial calendar of 5/30/75, etc. (74-CR-144)
5/21/75	Filed Application and Order allowing deft. Christina to travel outside jurisdiction of this court.
5/22/75	Sent Certified copy of Record on Appeal to CCA, 2nd Cir.
5/28/75	Filed Original Transcript of Proceedings of Jan. 31, 1975, Utica (74-14)
5/28/75	Filed Certification to Notice of Appeal (75CR144)
5/23/75	Filed Transcript of May 13, 1975, Auburn 74-CR-144
5/23/75	Filed Transcript of March 10, 1975, Syr. 74CR144
5/23/75	Filed Transcript of Dec 10, 1974, Auburn
5/23/75	Filed Transcript of Dec. 10, 1974 Auburn
5/30/75	Sent Supplemental Record on Appeal to CCA, 2nd cir.
6/2/75	Filed receipt from CCA for Record of Appeal sent. (74-144)
6/9/75	Filed Receipt from CCA for Supplemental Index. (74-144)
5/30/75	Off until 15 days after determination of appeal to 2nd Circuit.
9/8/75	Filed order for dismissal - Anthony R. Santacrose, Jr. Judge Port signed same 9/2/75
9/10/75	Filed transcript of proceedings 1/31/75, Utica. (74-144)
9/12/75	Filed Transcript of proceedings May 8, 1975 at Auburn (74-144)
9/12/75	Filed transcript of proceedings held March 4, 1975 Albany (74-144)

DATE	PROCEEDINGS
11/10/75	Defendant Thomas J. Abbadessa appears in court, states that he is financially unable to hire counsel. Signs financial statement. Judge may require deft. to pay counsel assigned. Clerk to send assignment sheets to Joseph Desti.
11/10/75	Filed Financial Affidavit.
11/19/75	Filed Notice of Motion by Remo Allio for an order permitting him to withdraw as Atty. for defts. returnable 12/8/75, Syracuse. (74CR144)
12/4/75	Filed Order & Petition for return of bail re-Anthony Santacrose, Jr.
2/8/75	Motion for Order allowing atty. to withdraw- Judge to prepare Order.
12/22/75	Filed Order of Judge Port granting Atty. Allio to withdraw with ref. to Canone & Abbadessa, and to withdraw with ref. to Gaetani & English when they advise Court who will represent them.
1/9/76	Mr. Gaetani indicates on the record that he desires no attorney and says that he wants to represent himself. Judge Port advised the deft. of his right to counsel and the defendant still waives his right to counsel.
	Mr. English appears and Judge Port assigns counsel. Clerk to make voucher and send to assigned counsel. Attorney Remo Allio is relieved from representing the two above defendants.
1/12/76	Filed Financial Affidavit and CJA Form 20 copy 5 appointing Robert P. Lewis as attorney for Jon M. English/
2/4/76	Filed letter from Judge Port directing the Charles W. Avery be assigned to represent Jon. M. English, replacing Mr. Lewis.
2/6/76	Filed CJA Form Copy 5 assigning Avery to represent Jon M. English
3/3/76	Received all papers from C.C.A. except Material submitted for in camera examination by Court - Sealed envelope.
3/3/76	Received all papers from C.C.A. on supplemental index.
3/2/76	Over to Auburn - time excluded.
3/8/76	Filed Certified copy of Decision of Circuit Court Appeals, reversing Order and that the action is remanded to Court for further proceedings
3/22/76	Received Sealed envelope from C.C.A.
3/24/76	Filed Order on Mandate, signed by Judge Port March 16, 1976.
4/12/76	Filed Affidavit and Notice of Motion-Abbadessa- Returnable 4/26/76 to withdraw as counsel.
4/26/76	Motion to withdraw as counsel granted. M. Weinberg assigned to Represent Abbadessa. Deft. to appear forthwith to this Court to turn himself over to U. S. Attorney.
5/1/76	Filed Notice of Motion and Application for Discovery & other relief for deft. Thomas J. Abbadessa returnable May 10, 1976 at Syracuse.
5/6/76	Filed Copy of Letter from A.U.S.A. Chalenski to Atty. Charles Avery.
5/5/76	Discovery to be completed by May 15, 1976. Ready on June 1st. Directed to unseal Wiretap Orders 15,16 & 17.
5/7/76	Filed Bill of Particulars and Discovery Information as to Frank S. Cannon
"	" " " " " " " " " " Jon N. English
"	" " " " " " " " " " Raymond Masciarelli
"	" " " " " " " " " " Joseph N. Maruca
"	" " " " " " " " " " Stanley Reppucci
"	" " " " " " " " " " James W. McGrath
"	" " " " " " " " " " Andrew J. Quinn
"	" " " " " " " " " " Thomas J. Abbadessa
5/10	Motion for Discovery and Other Relief-Adjourned to 5/24/76 Utica, on consent.
5/10	Filed Bill of Particulars and Discovery Information.
5/13	Filed Notice of Motion for Masciarelli & McGrath returnable May 24, Utica, for Order to suppress evidence.

DOCKET ENTRIES.

DATE	PROCEEDINGS
5/13/76	Filed Supplement to Application for Discovery and Other Relief for deft. Abbadessa returnable May 24.
5/11/76	Filed Government's Response to Motion for Discovery & Other Relief of Deft. Thomas J. Abbadessa
5/18/76	Filed Notice of Motion and Motion for Discovery, etc., returnable May 24, 1976 on behalf of Deft. English.
5/19/76	Filed Response to Motion for Discovery & Other Relief, Deft. English
"	Filed Response to Supplement to application for discovery & other relief deft. Abbadessa
"	Filed Response to Notice of Motion for defts. Masciarelli & McGrath.
5/24	Motion to Suppress- referred to trial Judge. Motion for discovery & Inspection-denied without prejudict to renewal by counsel before trial Judge.
5/26	Filed Copy 5 of CJA Form 20 appointing Jerome Nealon for V. Christina
5/27	Filed copy of letter from Attorney Wineburg to AUS.A. Chalenski re deft. Abbadessa
5/28/76	Filed Points and Authorities in Support of Motion to Suppress on behalf of defts. Masciarelli & McGrath.
6/1	Filed deft. Abbadessa's Supplemental Memorandum of Law in support of Motion to suppress evidence obtained from wire interceptions.
6/1	Filed Memorandum of Law on behalf of deft. Quinlan in support of suppression motion.
6/1	Filed Application for Motion to Suppress on behalf of deft. Quinlan.
5/28	Evidentiary Hearing - matter in recess until 6/1/76
6/1	Evidentiary hearing continued. Decision reserved.
6/8/	Filed Government's Memorandum of Law opposing motions to suppress evidence obtained from Wire interceptions.
6/9	Filed Government's Supplemental Memorandum of Law opposing motions to suppress evidence obtained from Wire interceptions.
6/9	Filed reply memorandum to Government's Supplemental Memorandum of Law of 6/7/76 submitted for Abbadessa.
6/3/76	Filed Defts. Masciarelli & McGrath's Memorandum of Law in support of motion to suppress evidence obtained from wire interceptions.
6/21/76	Filed Defendant's Quinlan's reply to Government's Supplemental Memorandum.
6/30/76	Hon. Lloyd F. MacMahon directs the Clerk's office to open all MP Wire Tap Orders and MP 15, 16, 17 Tapes to search for Search Warrants. Warrants found at 4:30 PM in Judge Port's Chambers.
7/14/76	Counsel are all present and heard in argument for and against the motions to suppress with regard to the search warrants that were located recently. Mr. Avery withdraws his motions for suppression on above matter and therefor the question becomes moot. Motion to suppress as to deft. Abbadessa is granted.
June 29	Filed Memorandum of Judge MacMahon denying Suppression to all defts. except deft. Abbadessa with reference to the third intercept Order dated May 3, 1974 granted.
July 20	Filed Memorandum of Judge MacMahon
June 29	Filed Notice of Motion for a Suppression Hearing.
9/1/76	Filed Motion for Severance of defendant Vincent Christina returnable Sept. 13.
9/8/76	Filed Notice of Motion for severance of deft. Thomas J. Abbadessa.
9/9/76	Filed Government's Response to Deft. Quinlan's Motion for severance.
9/13	Motion for severance of deft. Abbadessa - granted
9/13	Motion for severance of Christina Motion for severance denied except as directed.
	Trial on Count 3 to be held separately, 1 st ca to stand trial first. Motion by deft. agreed to by Govt. Gov't prepare der.

DOCKET ENTRIES.

DATE	PROCEEDINGS
9/17/76	Filed Order of Severance for deft. Abbadessa's signed by Judge Port, severing Abbadessa from the trials of other defts.
9/20/76	Judge Port grants a continuance in the interest of justice without date. Mr. Boreanaz is to notify the clerk as soon as his present trial is finished. This case is to be ready with as little as one day notice.
9/28/76	Filed copy of Pre-trial motions of deft. Quinlan for severance, returnable 10/1/76
10/6/76	Filed Order of Judge Port granting motion to sever Christina, and deft. Christina to follow trial of Deft. Maruca on Ct. 3.
10/6/76	Filed Notice of Motion for Argument on Petition for severance of deft. Quinlan, returnable 10/12/76.
10/12/76	Filed endorsement of Judge Port, denying motion for argument on petition for severance of deft. Quinlan.
10/12/76	Motion to Sever-Denied, Judge endorses papers.
11/8/76	Filed defendant's (English) requests to charge.
11/9/76	This case is to have a jury drawn on Monday, Nov. 15, 1976 at 10:00 A.M. Clerk is directed to advise Mr. Boreanaz. Clerk is directed to advise Mr. DeSisti. Clerk is also directed to advise Albany of this for the calendar call.
1/15	Hearing on conflict of interest as to two deft. having same counsel. Judge Munson directs that Mr. McGrath should not be represented by Mr. Scaccia due to a conflict of interest and Mr. Scaccia should be relieved as counsel. Filed Financial Affidavit of Mr. McGrath.
1/16	Mr. James P. Shanahan is appointed to represent Mr. McGrath. Mr. Shanahan moves for a continuance on grounds stated, and severance. Motion for continuance and severance is granted in the interest of Justice, up to and including Dec. 20, 1976.
1/17	Defendants Cannone, Rappucci, Gaetani and Maruca move to change their previous plea of not guilty and to enter a plea of Guilty to Count 2 of the Indictment. Judge Munson gives the defendants their rights and directs the clerk to enter a plea of Guilty to Count 2 of the Indictment. Pre-sentence investigation is ordered. Bail is continued as to all defts. Sentencing is set for Jan 10, 1977 at 10:00 a.m.
1/17/	Mr. Avery moves for deft. English, Mr. Scaccia moves for deft. Masciarelli for a continuance on grounds states-motion granted in the interest of justice. Any motions are to be filed on or before Nov. 23, 1976. This case is to draw a jury on Nov. 29, 1976 at 10:00 a.m.
1/19	Filed Acknowledgement of Advice as to Rights for Deft. Gaetani, Joseph Maruca, Frank Cannone and Stanley Reppucci.
1/19	Filed Motion for Discovery for deft. Masciarelli and English.
1/19	Filed Notice of Motion for Discovery for Deft. English and Masciarelli returnable Nov. 18.
1/26	Filed Affidavit in Opposition to Motion for Suppression, Statement in opposition to Motion to Dismiss, Memorandum in Opposition to Motion for Suppression, for defts. Masciarelli and English.
11/16	Filed Proposed Voir Dire
2/23	Filed Notice of Motion for Suppression.
2/29	Trial - A. Chalenski for U.S. Dante Scaccia for deft., Masciarelli, Charles Avery for deft. English. Judge directs clerk to draw jury. Court in recess until 11/30.
1/30	Trial continued. Defts. counsel move to challenge entire panel of jurors-granted. Continuance in this case is granted in the interest of Justice, and is set for trial on 2/14/77 at 10:00 a.m. Syracuse.

DOCKET ENTRIES.

DATE	PROCEEDINGS
1976	
11/19	Filed Government's request to Charge
11/19	Filed Trial Memorandum
11/30	Argument is heard on motions to Dismiss, Suppression and for copies of the transcript to be provided to deft. counsel -all denied. Judge reviews in camera FBI file.
12/10/76	Filed Notice of Motion for suppression hearing returnable Dec. 15, 1976 at Syracuse, N.Y.
12/9/76	Filed Notice of Appeal by U. S. appealing Order of 11/11/76
12/13/76	Filed Deft's Masciarelli's Memo of law in support of motion to suppress evidence obtained from wire interceptions.
12/13	Filed response to motion for suppression hearing.
12/15/76	All counsel heard in argument on motion to dismiss - motion is reserved until Mr. Wineburg and Mr. Shanahan can appear on 12/16/76, also motion to suppress motions made returnable Jan. 7, 1977.
12/16/76	All parties present except Mr. Wineburg. All parties argue motion on suppression. No opposition by the Govt. Motion is granted. Date of the suppression hearing will be set by Judge Munson and all parties will be notified. Suppression hearing is set for Jan. 4, 1977 at 10:00 a.m. in Syracuse.
12/27/76	Filed Affidavit of A. Chalenski, Jr. AUSA.
12/28/76	Filed transcript of proceedings held Nov. 17, 1976.
12/28/76	Filed Notice of motion to join for trial, McGrath, Masciarelli & English returnable January 10, 1977, Syracuse.
12/30	Filed Order to engage services of electronics expert on behalf of indigent defendant pur. to provisions of 18USCA 3006A(a) and (e)(1)
12/30	Filed ex parte motion for services other than counsel pur. to 18USC 3006A(e)(1) returnable Jan. 3, 1977.
1977	
1/3/77	Pre-Trial- 2 hours. Suppression Hearing; 11:30 A.M. Court meets. AAC for U.S. Dante Scaccia for Masciarelli, Charles Avery for English, James P. Shanahan for McGrath. Mr. Scaccia moves for all defendants to keep the tapes under his control during the inventory, and from then on. 2:10 P.M. Court meets - Witness for Govt.: Roy Hazlewood. Mr. Scaccia moves for all Jenks Act material at this time, - denied. At 5:20 P.M. Court stands in recess until 9:30 A.M. 1/4/77.
1/4/77	Suppression Hearing - 1 hour pre trial - 11:00 A.M. Court meets. Witness for Govt.: Roy Hazlewood - at 5:15 P.M. Court stands in recess until 10:00 A.M. January 4, 1977.
1/4/77	Suppression hearing continued - due to the fact that the Court Reporter is sick, this case is adjourned until 2:00 P.M. 1/4/77.
1/4/77	Witness for Govt. Roy Hazlewood - at 5:30 P.M. Court stands in recess until 10:00 A.M. Jan. 5, 1977. This case stands in recess until 10:00 A.M. Friday Jan. 7, 1977.
1/7/77	The suppression hearing is adjourned to Jan. 21, 1977 at 10:00 A.M. Court stands in recess until Jan. 10, 1977.
1/10/77	The Court advised the defendant Frank S. Cannone of his right to speak in his own behalf, defendant declines, his attorney speaks. The defendant is placed on probation for a period of three years on Count 2, to commence upon his release from custody in Indictment 75-CR-123. Count 1 is dismissed on motion of Asst. U.S. Attorney.
1/10/77	The Court advised the defendant of his right to speak in his own behalf, defendant declines, his attorney speaks. The defendant is placed on probation for a period of three years on Count 2, to commence upon his release from custody in Indictment 75-CR-123. Count 1 is dismissed upon motion of Asst. U.S. Attorney <i>Capaller</i>

DOCKET ENTRIES.

DATE	PROCEEDINGS
1977	
Jan. 10	The Court advised the defendant Thomas Gaetani of his right to speak in his own behalf, defendant declines, his attorney speaks. The defendant is placed on probation for a period of two years on Count 2. Count 1 is dismissed on motion of Assistant US. Attorney.
Jan. 10	The Court advised the defendant Joseph N. Maruca of his right to speak in his own behalf, defendant declines, his attorney speaks. The defendant is placed on probation for a period of three years on Count 2, to commence upon his release from custody in Indictment 75-CR-123. Counts 1 and 3 are dismissed on motion of Asst. U.S. Attorney.
Jan. 11	Filed Judgments on Frank S. Cannone, Stanley A. Reppucci, Thomas Gaetani, Joseph N. Maruca. 2 copies of each to U.S. Marshal.
Jan. 10	Filed Stipulation of U. S. Attorney.
Jan. 10	Motion to join for trial-denied-adjourned to Feb. 15. Case of Mr. McGrath set for trial March 1, 1977, on consent. Stipulation filed today in effect as to 1800 pages. 1800 pages of transcript turned over to Mr. Scaccia.
1/21/77	Filed Order for Dismissal for deft. Vincent N. Christina, signed Jan. 21, 1977 by Judge Munson.
1/21/77	Motion for Suppression Hearing, continued. Witnesses. Hearing adjourn without date for renewal. Court orders boxes containing tapes to be resealed. Sealed and signed by Judge Munson in open court.
2/10/77	Filed CJA Form 20-copy 2 for Vincent M. Christina
3/1/77	Over to Syracuse. In the interest of Justice on Jon N. English, Raymond Masciarelli, James W. McGrath, Thomas J. Abbadessa.
3/14/77	Filed Order to Return Bail on Vincent N. Christina signed by Judge Munson on March 10, 1977.
3/23/77	Filed Request for computation of time by Atty. Avery, Shanahan, Scaccia.
4/4/77	Filed Petition & Order for Return of Cash Bail. (Cannone and Maruca)
3/23/77	XXXXXXXXXXXXXXXXXXXX
4/6/77	Suppression hearing continued. Masciarelli, English & McGrath. Govt. moves to unseal MP 15- Granted.
4/7/77	Suppression hearing continued. Court directs that MP 16 be unsealed. Mr. Chalenski moves to offer into evidence all tapes in MP 15, 16, 17. Decision is reserved. MP 15 & 16 are resealed. All defts. move to dismiss and suppress on grounds stated. Reserved. Court stands in recess to chambers.
4/11/77	Filed Defendant Masciarelli's Supplemental Memo. of Law in support of motion to suppress evidence obtained from wire interceptions.
4/11/77	Suppression Hearing continued. Witness for deft. Wm. A. Cooper. MP15 unsealed at Order of the Court. Deft. McGrath rests at 3:55 P.M. All defts. rest at 3:56 P.M. Gov't. moves to play the tapes-denied and overruled. Evidence closed at 4:00 P.M. MP15 resealed. Court stands in recess at 4:25 P.M.
4/19/77	Filed Government's Memo. of law in opposition to motion to suppress evidence.
4/22/77	Filed Petition Order for return of cash bail for Thomas Gaetani, Stanley Reppucci, signed by Judge Munson, April 21, 1977
4/27/77	Suppression motion is denied for McGrath, Masciarelli and English with a written opinion to follow. Pre-trial 3 hours. Motion to dismiss on grounds stated by Mr. Scaccia, Avery and Shanahan is denied in all respects. Mr. Chalenski moves to have time excluded for Defts. English and Masciarelli from April 27, 1977 to May 11-in the Interest of Justice-Granted. Judge directs the clerk to draw a jury at 3:10.

DOCKET ENTRIES.

74-CR-142 - Cannone, et al

47

DATE	PROCEEDINGS
1977	
April 28	Pretrial - 2 hours. Motion for a mistrial is made by Mr. Shanahan- Mr. Chalenski does not oppose - granted. Jury is excused for the balance of session. Judge Munson directs that the McGrath trial be placed at the head of the Criminal calendar to be called May 3, 1977 in Syracuse.
May 3	James W. McGrath - Ready - to go to trial May 11, 1977 at 2:00 P.M. Raymond Masciarelli; Jon N. English - Motion for continuance - denied. to be tried after James W. McGrath.
May 11	Thomas J. Abbadessa - Ready - to be tried after Masciarelli & English. Mr. Chalenski moves for a continuance as to Deft. Masciarelli and English. - Granted in the interest of Justice until May 31, 1977 due to the fact that Deft. McGrath is being tried now.
May 11	Pre-trial. Court meets at 2:30. Gov't. ready, Defendant ready. Jury is drawn and sworn at 3:45. Two alternates drawn and sworn.
May 12	Trial of Mr. McGrath is continued. Mr. Chalenski moves to have Mr. Avery excluded-denied. Mr. Chalenski opens for Govt. Mr. Shanahan opens for deft. Witness for Govt. Robert Hazlewood. Clerk directed to unseal boxes of tapes in MP15, 16, 17. Clerk directed to keep custody of these at all times.
May 13	Trial continued. Mr. Shanahan moves to rease blackboard-granted. Mr. Shanahan moves to dismiss MP 16 and 17 as to Deft. McGrath-denied.
May 16	Trial continued.
May 17	Trial continued. Mr. Shanahan moves for mistrial on grounds stated-denied. Tapes are played ex. No. 14ii, 1 of 2.
May 18	Trial continued. Mr. Shanahan moves to withdraw the transcripts from evidence - denied. Mr. Chalenski moves to continue to play tapes in this case-granted. Mr. Shanahan moves to have a page of the transcript removed-granted-a new page is substituted.
May 19	Trial continued. Mr. Shanahan moves to have portions of tapes transcribed by court reporter-denied. Tapes are played. Mr. Shanahan moves to have transcript of MP16 transcribed-denied. Mr. Shanahan moves to have the transcrip in MP16 and MP17 dismissed-denied.
May 20	Trial continued. Mr. Shanahan moves to dismiss on grounds stated- denied. Mr. Shanahan moves to suppress tapes and transcripts on grounds stated-denied. 3500 material ordered sealed by the Court
May 19	Filed Gov't. Request to Charge 3a
May 24	Trial continued. Mr. Chalenski sums up, Mr. Shanahan sums up, Mr. Chalenski rebuts. Judge charges jury. Guards sworn. Jury retires at 12:01. Jury comes into court and find deft. McGrath guilty on Count 1 and Guilty on Count 2. Jury excused until June 1. Mr. Shanahan moves to set aside verdict and to dismiss on grounds stated-denied. Bail is continued. Presentence investigation is ordered. No date set for sentencing.
May 24	Filed Court Exhibit 1, 2 and 3. McGrath
June 20	The Court advised the defendant of his right to speak, defendant declined, his attorney spoke. The Assistant U. S. Attorney recommends a substantial jail sentence, offers Government Exhibit #1, in evidence. It is adjudged that the defendant is hereby committe to the custody of the Attorney General or his authorized repre- sentative for a period of two years on Count One. The execution of sentence is suspended and defendant is placed on probation for 2 years. The defendant is hereby committed to the custody of the Attorney General, or his authorized representative for a period of two years

DOCKET ENTRIES.

DATE	PROCEEDINGS
1977	
June 20	on Count two, the execution of the sentence is suspended and the defendant is placed on probation for a period of two years to run concurrent with Count one. Defendant is advised of his right to appeal.
June 22	Filed Notice of Appeal for defendant James W. McGrath.
June 20	Trial - Raymond Mascarelli, Jon English. Case is called and all parties are ready. Case in recess - pre trial 3 hours.
June 21	Trial continued. Judge directs the Clerk to draw a jury. Court in recess.
June 22	Judge directs the filing of the Information in the case of Raymond Mascarelli - 77-CR-70. Judge directs the filing of the Information in the case of Jon English - 77-CR-71
June 29	Filed Judgment and 2 copies delivered to the U. S./ Marshal. (McGrath)
July 7	Filed Petition & Order for return of cash bail for English
July 11	Filed Petition & Order for return of cash bail for Masciarelli
Aug. 22	Filed Notice of Appeal on behalf of English and Masciarelli from all rulings on all pretrial motions.
Sept. 13	Dismissed 9/12/77 - Andrew J. Quinlan
Sept. 13	Hold - Applied for Pre-trial diversion. (Thomas J. Abbadessa)
Sept. 13	Filed Order for Dismissal for Andrew J. Quinlan signed by Judge Munson on Sept. 12, 1977.
Dec. 16	Filed receipt of original papers by C.C.A. sent on appeal.
12/22/77	Filed Criminal Appeal Scheduling Order (2 separate Orders)
12/28/77	Filed Copy 5 of CJA-20 Form.
1978	
Jan. 16	Filed Copy of Judge MacMahon's Certification of Attorneys Voucher for Attorney Michael A. Wineburg for defendant Thomas J. Abbadessa.
Jan. 26	Filed Copy 2 of CJA-20 Form for Richard Beach, Attorney's affidavit. Judge MacMahon's Certification.
June 5	Filed Order for Dismissal for deft. Thomas Abbadessa, sined 5/26/78 by Judge Munson.

ORDER ON MANDATE, dated 3-16-76.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED *Copy*

MAR 24 1976

UNITED STATES OF AMERICA,

v.

AT 10 O'CLOCK M.
J. R. SCULLY, Clerk
UTICA

FRANK S. CANNONE, STANLEY A. RAPPUCI,
THOMAS A. GABIANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR., RAYMOND D.
MASCIARELLI, JAMES W. McGRATH, ANDREW J.
QUINLAN and THOMAS J. ABBADESSA.

74-CR-142

UNITED STATES OF AMERICA,

v.

74-CR-144

RAYMOND D. MASCIARELLI and LAWRENCE SCHULTZ.

EDMUND PORT, Judge

ORDER ON MANDATE

By an Order dated March 11, 1975, I directed, inter alia, that the Government supply the defendants' attorneys with the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief. By Order dated April 18, 1975, a motion to vacate said provision was denied. Finally, by Order dated May 1, 1975, I directed that the Government make such disclosure on or before May 9, 1975, and the failure of the Government to make disclosure would result in the exclusion of the non-disclosed witness' testimony upon the trial of the action.

The Government appealed the amended order on May 8, 1975, and the United States Court of Appeals for the Second Circuit, by order dated September 26, 1975, reversed the appealed order and remanded the action to this District Court for further proceedings in accordance with the opinion of the Second Circuit. The mandate of the Court of Appeals having been filed in the office of the Clerk of this court on March 8, 1976, and upon all of the proceedings had

ORDER ON MANDATE, dated 3-16-76.

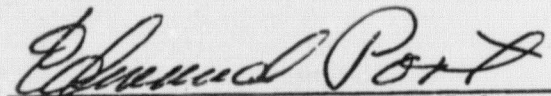
herein, it is

ORDERED, that the third ordering paragraph of the Order of March 11, 1975, directing disclosure of the names and addresses of Government witnesses, be and the same hereby is vacated, and it is further

ORDERED, that the Orders herein of April 18, and May 1, 1975, be and the same hereby are vacated, and it is further

ORDERED, that that part of the defendants' motion for discovery seeking the names and addresses of all Government witnesses which the Government intends to call in the presentation of its case in chief, be and the same hereby is denied for the reasons contained in the Second Circuit's opinion in connection herewith, and it is further

ORDERED, that the Clerk of the court serve copies of this Order on the attorneys for the parties hereto.


United States District Judge

Dated: March 16, 1976.

LETTER, dated 6-22-76.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

June 22, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N. Y. 14203
Attorney for defendants, Frank S. Cannone
Stanley A. Reppaci,
and Joseph N. Maruca

Charles W. Avery, Esq.
P. O. Box 684
188 Genesee Street
Auburn, N. Y. 13021
Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, New York 13202
Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna. 18800
Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P. O. Box A
Auburn, N. Y. 13021
Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, N. Y. 13202
Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, N. Y. 13905

Re: United States v. Cannone, et al.
#74-CR-142



LETTER, dated 6-22-76.

Enclosed please find a photocopy of a file copy of each of the following search warrants dated June 17, 1974:

The persons of: STANLEY A. RAPPUCCI,
THOMAS A. GAETANI,
JOSEPH N. MARUCA,
JON N. ENGLISH,
EUGENE D. SCHIAPPA,
ROGER L. EVANEK,
JOYCE EVANEK,
CARMEN C. DELANZO,
JAMES W. MCGRATH,
RAYMOND D. MASCIARELLI

The premises located:

in Room #4, Vestal Motel, Vestal Parkway East,
Vestal, New York

In a one and one-half story, single family residence having white cedar shake siding with brown trim and attached single car garage located at 820 Morelando Drive, Endicott N. Y.,

On the second floor of a two story, two-family frame dwelling, painted blue and white and situated at 52 Rotary Avenue, Binghamton, New York, which second floor premises has an entrance on the south side of the building,

On the first floor of a four story red brick building, the first floor being painted white, and situated at 229 Chehango Street, Binghamton, New York,

In the basement apartment of a two-story residence having tan colored asbestos brick siding, at 24 Lisle Street, Binghamton, New York, which basement premises has an entrance on the east side of the building.

We still have not been able to uncover any filed copies showing the return on the warrants or the inventory filed with same.

AAC/vam
Enclosure

Very truly yours,
JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

LETTER, dated 6-25-76.

United States Department of Justice

IF REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

June 25, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N.Y. 14203

Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci,
and Joseph N. Maruca

✓ Charles W. Avery, Esq.
P.O. Box 684
188 Genesee Street
Auburn, N.Y. 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, New York 13202

Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna. 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P.O. Box A
Auburn, N.Y. 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, N.Y. 13202

Attorney for defendant, Lawrence Schultz

Thomas A. Gaetani
22 Rotary Avenue
Binghamton, N.Y. 13905



LETTER, dated 6-25-76.

Re: United States v. Cannone, et al.
74-CR-142

Gentlemen:

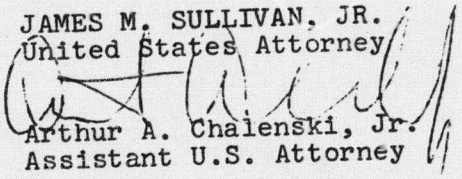
Enclosed please find one copy of each of the following receipts for seized goods dated June 17, 1974:

- 1) 52 Rotary Avenue
Binghamton, N.Y.
- 2) 24 Lisle Street
Basement Apt.
Binghamton, N.Y. signed by Carmen DeLenzo
- 3) 820 Morelando Drive
Endicott, N.Y.
- 4) Room 4 - Vestal Motel
Vestal, N.Y.
- 5) 229 Chenango Street
Binghamton, N.Y.

I am advised that the Clerk has still been unable to locate the inventory and search warrants filed on or about June 17, 1974. The inventory, however, should correspond in the description of items seized to the receipts attached hereto, and under the circumstances, these receipts should constitute the best evidence of what was seized.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney


Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

AAC/pm

Enc.

LETTER, dated 7-1-76.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE:

UNITED STATES ATTORNEY

NORTHERN DISTRICT OF NEW YORK

FEDERAL BUILDING

SYRACUSE, N. Y. 13201

CR74-0947/AAC

July 1, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, NY 14203Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci
and Joseph N. Maruca✓ Charles W. Avery, Esq.
Post Office Box 684
188 Genesee Street
Auburn, NY 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 So. Salina Street
Syracuse, NY 13202Attorney for defendants, Raymond D. Masciarelli
and James W. McGrathMichael J. DeSisti, Esq.
101 Hayden Street
Sayre, PA 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
Post Office Box A
Auburn, NY 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, NY 13202

Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, NY 13905Re: United States v. Cannone, et al.
#74-CR-142

LETTER, dated 7-1-76.

US v Cannone, et al.
#74-CR-142

-2-

July 1, 1976

Gentlemen:

Enclosed please find a copy of the original search warrants with inventory as follows:

The persons of: STANLEY A. RAPPUCCI,
THOMAS A. GAETANI,
JOSEPH N. MARUCA,
JON N. ENGLISH,
EUGENE D. SCHIAPPA,
ROGER L. EVANEK,
JOYCE EVANEK,
CARMEN C. DELANZO
JAMES W. MCGRATH,
RAYMOND D. MASCIARELLI

The premises located:

in Room #4, Vestal Motel, Vestal Parkway East,
Vestal, New York

In a one and one-half story, single family residence having white cedar shake siding with brown trim and attached single car garage located at 820 Morelando Drive, Endicott, N. Y.,

On the second floor of a two story, two-family frame dwelling, painted blue and white and situated at 52 Rotary Avenue, Binghamton, New York, which second floor premises has an entrance on the south side of the building,

On the first floor of a four story red brick building, the first floor being painted white, and situated at 229 Chenango Street, Binghamton, New York,

In the basement apartment of a two-story residence having tan colored asbestos brick siding, at 24 Lisle Street, Binghamton, New York, which basement premises has an entrance on the east side of the building.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

AAC:kr
Enclosures

Arthur A. Chalenski
Assistant U. S. Attorney

**APPELLANTS' COMPUTATION OF TIME,
Masciarelli, English and McGrath through 6-21-77.**

COMPUTATION OF TIME
Northern District Plan

Date	Days	Category	Reason
(Northern District's Plan(Speedy Trial Act of 1974) effective 7/1/76)			
<u>Government's Readiness for trial</u>		(Plan Rule 7B (1)) 180 days after indictment.	
11/18/74-12/18/74	30	Excludable Non excludable	Government's notice of readiness for trial Motions
12/19/74-1/13/75	25	Excludable Non excludable	
1/14/75-5/15/75	120	Excludable Non excludable	Government's failure to comply with court ordered discovery
5/16/76 - 3/24/76	281	Excludable Non excludable	Interlocutory appeal
3/24/76 - 6/30/76	68	Excludable Non excludable	Government's failure to comply with court ordered discovery
6/30/76 - Warrants found, completion of court ordered discovery			
<u>Totals</u>	306	Excludable 238 Non excludable	

Commencement of trial (Plan rule 5 (a) (1)
180 days after 7/1/76

Masciarelli and English

7/1/76 - 9/20/76	14	Excludable	Motions
	68	Non excludable	
9/21/76 - 11/29/76	55	Excludable	Co-counsel not available
	14	Non excludable	
11/29/76 - Commencement of trial			
<u>Totals</u>	69	Excludable 82 Non excludable	

**APPELLANTS' COMPUTATION OF TIME,
Masciarelli, English and McGrath through 6-21-77.**

Commencement of trial (Plan Rule 5 (a) (1))
180 days after 7/1/76

McGrath

7/1/76 - 9/20/76	14		Excludable	Motions
		68	Non excludable	
9/21/76 - 11/15/76	55		Excludable	Co counsel not available
			Non excludable	
11/15/76 McGrath trial severed				
11/16/76 - 12/20/76	34		Excludable	New counsel assigned
			Non excludable	
12/21/76 - 1/21/77	31		Excludable	Motions
			Non excludable	
1/22/77 - 4/27/77	21		Excludable	Motions
		86	Non excludable	
4/27/77 McGrath trial commenced				
<u>Totals</u>	<u>155</u>	<u>154</u>	Excludable	
			Non excludable	

Retrial after Mistrial (Plan Rule 5 (d))
60 days after order

Masciarelli and English

11/30/76 - 2/14/77	77		Excludable	Consent
			Non excludable	
2/15/77 - 4/27/77	3		Excludable	Motions
		67	Non excludable	
4/28/77 - 6/21/77	18		Excludable	
		37	Non excludable	
6/21/77 Trial commenced				
<u>Totals</u>	<u>98</u>	<u>104</u>	Excludable	
			Non excludable	

TRANSCRIPT OF ORDER DIRECTING UNITED STATES TO
PREPARE ORDER (1-13-75).

And if your Honor please, our position is that this indictment is specific and any more details would probably be impossible to provide in more exact details. So that is why we oppose that demand for particulars as to the illegal bookmaking operation.

As to tangible evidence, your Honor: We have opposed Mr. Boreanaz' demand in the present form because it seems to me that what he has asked for is: Government, you open up your file to us, your Honor, and without something shown more particular, we oppose this in its present posture.

That is, I think, the three general areas of disagreement here, your Honor.

THE COURT: All right, gentlemen: The discovery and particulars motions for discovery and particulars are granted to the extent that they have been supplied by the government. And in addition, the government is directed to permit the defendants to hear the tapes of the interceptions, any interceptions, and Count 3 is severed for trial from Counts 1 and 2.

Government's Counsel is directed to submit an order.

MR. ALLIO: May I be heard, your Honor?

THE COURT: Yes.

TRANSCRIPT OF ORDER DIRECTING UNITED STATES TO
PREPARE ORDER (1-13-75).

29

MR. ALLIO: Am I to assume that we are not entitled to know when and where the alleged illegal actions took place as far as Santacrose is concerned?

THE COURT: You are to assume that the order has been granted in the form that I have just granted it.

MR. SCACCIA: I have a question. Before I came over this morning I picked up the mail that had been delivered, and there is a notice for trial of this matter. I think that the call is January 31st, and --

THE COURT: We cannot hear you.

MR. SCACCIA: This morning I just picked up the mail that reached our office, and there is a notice moving these cases for call on January 31, at Utica, and I take it that the government is moving these cases for trial.

As a practical matter, I think that we ought to be given a reasonable opportunity to be provided with the material that the Court has directed, bearing in mind that he has not provided any of the material, even that in which he has volunteered.

THE COURT: How long will it take you to provide this? Ten days?

TRANSCRIPT OF ORDER DIRECTING UNITED STATES TO
PREPARE ORDER (1-13-75).

MR. WELCH: Approximately, yes.

Your Honor, as a practical matter, this case is about No. 18 on the calendar, and I have a net worth case that will take two or three weeks.

THE COURT: We never know how long the call will be. It will be a two- or three-week trial, and it can also take as long as it takes to say, "I plead guilty," and this material is to be provided within ten days.

MR. SCACCIA: Thank you, your Honor.

MR. WELCH: If your Honor please, may we request a similar discovery order that may be made applicable to John English?

THE COURT: It applies to all defendants, on the motions.

MR. WELCH: He didn't file any.

THE COURT: I fixed a time for motions, and he has waived. He is here by Counsel, and his Counsel hasn't done anything.

MR. SCACCIA: I do have another question with respect to the other indictment involving Mascarelli and Schultz from Ohio. I understand that Schultz still has not been arraigned, and I would ask the Court that that case not be moved for trial until it is ready for trial,

TRANSCRIPT OF ORDER DIRECTING UNITED STATES TO
PREPARE ORDER (1-13-75).

including all of the arraignment proceedings.

THE COURT: I don't know anything
about that. They tell me that this is only Mascarelli.

MR. SCACCIA: And I take it that he
would not be put on the call?

THE COURT: All right.

(Whereupon the proceedings were
closed.)

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- :
UNITED STATES OF AMERICA, :

-against- :

RAYMOND D. MASCIARELLI :
LAWRENCE SCHULTZ, :

Defendants. :
----- :

UNITED STATES OF AMERICA, :

-against- :

FRANK S. CANNONE, et al., :

Defendants. :
----- :

Criminal No.
74-CR-144

Criminal No.
74-CR-142

The above-entitled actions came on
for motions at Syracuse, New York on the 10th day of
March, 1975, before Honorable Edmund Port, United States
District Judge for the Northern District of New York,
commencing at approximately 10:00 a.m.

APPEARANCES:

HONORABLE JAMES M. SULLIVAN, JR.,
United States Attorney for the Northern District of
New York, Federal Building, Syracuse, New York, by:
EUGENE WELCH, ESQ., Assistant United States Attorney.

DANTE N. SCACCIA, ESQ., Attorney for
Defendants Masciarelli and Schultz, Wilson Building,
Syracuse, New York.

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

P R O C E E D I N G S

THE CLERK: United States of
America versus Raymond D. Masciarelli and
Lawrence Schultz, 74-CR-144 and United States of
America versus Frank S. Cannone, et al., 74-CR-142.

MR. SCACCIA: May it please the
Court, the matter here involves moving trial by
the Government of both the cases just called by
the clerk. This Court direct the Government
to prepare and submit an order within a ten-day
period and send copies of the proposed order to
Counsel, and I respectfully submit there have been
violations with respect to certain extensive
materials that were in the possession of the
Government.

THE COURT: What's the problem?

MR. SCACCIA: The problem is that
the Government has been moving this case for trial
at a time when it is not ready for trial, and
moreover, motions were made at Utica before
Judge McMahon bringing this entire matter to a
head, by both Mr. Allio and myself, and at that
time, Judge McMahon marked the case off. We had
moved that the case be removed from the ready
calendar, since the case was not ready to proceed,

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

3

not by virtue of any delay attributable to the Defendants. Judge McMahon, in response to Mr. Lowe who represented the Government, said that the matter as to whether time would be charged would be left to the trial judge, and within a few days after that ruling, the Government moved the case again, this time at the Albany session, and we still haven't received any discovery material of any kind.

THE COURT: So your problem is you haven't received the material on discovery.

MR. SCACCIA: That's correct.

MR. WELCH: If your Honor please, I would like to note on the record that this case was dated November 18, the the six-months rule expired without any motions. Not until March 19th-- The case is basically three and a half months behind. On January 30th your Honor ordered certain disclosures to be made. At that time, your Honor, after asking me, set ten days to accomplish that because of the pending Utica trial calendar. It was at that time when I came down with what subsequently was diagnosed as infectious hepatitis which left me out of work for five weeks. Regarding the matter of an answer, the matter was adjourned because

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

4

of the inability of the Government to file on time for the Defense to prepare for the trial. The Court brought the matter back up on the Albany calendar, your Honor, and because of the confusion in my office, the discovery has never been accomplished and the Defense could not be ready to go to trial at the Albany calendar. I have received word from three defense attorneys as to what their motion is, your Honor.

THE COURT: Well, I have gotten letters. It seems everybody representing the defendants but Mr. Scaccia wants the matter adjourned, is that right?

MR. WELCH: That's my interpretation.

THE COURT: So I read the minutes here before Judge Foley, and there was an error there. Either he changed his mind after talking to Mr. Scaccia or else Mr. Scaccia misunderstood when he represented to the Court that all the defendants were urging trial at that session.

MR. WELCH: I have nothing further, your Honor.

THE COURT: Be that as it may.

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

5

Mr. Scaccia, every time you appear before me --

MR. SCACCIA (Interrupting):

Listen, Judge, I don't think that's fair, that that comes up every time I appear before you, and we have --

THE COURT: You mean to speak respectfully.

MR. SCACCIA: I am, your Honor.

THE COURT: This "Listen, Judge" doesn't come in that category, so you learn that.

MR. SCACCIA: I certainly didn't intend disrespect there, your Honor.

THE COURT: I won't tolerate that. I want that understood. All right, I have heard the argument. When can this material be prepared?

MR. WELCH: I anticipate no more delay, your Honor, and the next two weeks --

THE COURT: Did I issue an order here, or did the Government agree to --

MR. SCACCIA (Interrupting): Both, your Honor.

THE COURT: Were there any delays?

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

6

MR. SCACCIA: Yes, there were, your Honor. That's the point I was trying to make. The Government was supposed to prepare an order. They had the list of orders.

THE COURT: Has anybody got a transcript of that?

MR. SCACCIA: I have notes, and there are minutes.

THE COURT: What was the date of that?

MR. WELCH: January 13.

THE COURT: All right. I will prepare an order that will take care of that. I will give you five days to submit the material that is required. I appreciate that you were seriously ill, and I think Counsel does. Everyone does. The case is to be removed from the Albany calendar. The case is to be Number One on the May Criminal Calendar call.

MR. SCACCIA: I brought letters Counsel have been sent, plus their telephone calls. They have the impression that the case is not going to be moved for the Auburn term. Now, I was not part of that, but I feel that I ought to point it out to the Court.

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

7

THE COURT: You mean the other
defendants?

MR. SCACCIA: Yes. In their
impression --

THE COURT: Well, I will just
defer to Mr. Welch. He was a party to this.

MR. WELCH: Your Honor has the
letters to the Court with their motions, and their
motions appear to be that they are not ready and
do not want to be ready until the Government has
supplied that material. I anticipate having that
material long before the Auburn Term, your Honor.

MR. SCACCIA: Now, Judge, there
is another matter that is still pending and that
was heard on motions made at Utica on January 31,
and that is as to whether or not the time is
going to be chargeable to the Defense.

THE COURT: Well, that I can
determine when the matter arises. It may become
academic.

MR. SCACCIA: Right. The reason
I brought it up is because at the Albany term
the matter was handled systematically, but there
was a question as to whether or not time was
chargeable and that is what --

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

THE COURT: Well, it was not that soon and the gentlemen still consented an order be served, and the Court was unaware of it.

MR. SCACCIA: The Defense was moving the case for trial. Whether it was the U.S. Attorney's office -- that was one of the things that Judge Foley directed and that was one of the reasons he was ordering the minutes transcribed and sent here, your Honor, to bring this matter of co-ordination to your Honor's attention.

THE COURT: Now, what this lawyer Remo Allio does is make an observation that, in his opinion, which he doesn't dignify as carrying much weight -- The way he puts it is his opinion, together with 35 cents will get him a ride on the subway -- but in his opinion, the case will not be going to trial until September of this year because there are many and various things to do and many attorneys involved. Now, I think that it can be fairly certain that as long as Mr. Scaccia wants a trial that it will be tried before September. It will be tried at the May Term, as long as the Defense Attorney wants a trial.

MR. SCACCIA: I am simply

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

asking, Judge, we not be put in position --

THE COURT: Well, it will be
tried in May. As long as somebody wants to try
it, it's going to be tried.

MR. SCACCIA: Do I take it
your Honor is reserving to trial or the later
term?

THE COURT: Well, there is no
issue before me. There is nothing to decide
right now. If we get a question of the six-
months rule becoming involved, why, that will
be it. Right now it's no problem.

MR. SCACCIA: Judge, it only
comes up because --

THE COURT: Well, whatever it
comes up for, it's no problem, and the six-months
rule, of course, is not an arbitrary rule of
trial; it's just a rule that the Government need
be ready for trial. It doesn't necessitate a
trial within six months. The rule doesn't say that.

MR. SCACCIA: No. I understand
that, your Honor, but what causes problems is there
was a ruling by the Court in each and every case
as to whether the time would be chargeable to the
Defense or chargeable to the Government.

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

10

THE COURT: And this was left
open.

MR. SCACCIA: Judge Foley
referred that question here.

MR. WELCH: It's all on the
record.

THE COURT: Well, I read that
record, and as with most of those records where
there is conversation back and forth, it's
largely unfinished sentences. It's difficult
to understand.

MR. SCACCIA: I might say there
were third and fourth parties also speaking,
your Honor.

THE COURT: Therefore, there were
all kinds of interruptions, but that question
isn't ripe yet, and, of course, I am certain that
any judge considering time factors is going to
take into consideration the fact that Mr. Welch
was seriously ill.

(Whereupon, the proceedings in
the above-entitled action were concluded.)

TRANSCRIPT SETTING FORTH THAT HON. EDMUND PORT
HAD TO PREPARE ORDER (3-10-75).

I, M. Peter Tweedy, Acting Official
Reporter for the United States District Court,
Northern District of New York, do hereby certify
that the foregoing is a true and accurate transcript
of the stenographic notes of the proceedings held
at Syracuse, New York on the 10th day of March,
1975.

Albany, New York
Dated: May 23, 1975

LETTER from Dante M. Scaccia, Esq. to Hon. Edmund Port, dated 4-29-76.

Frank L. Love
Ralph J. Balducci
Dante M. Scaccia

Richard J. Burchard

Love, Balducci & Scaccia
Attorneys at Law

300 Wilson Building
 306 South Salina Street
 Syracuse, New York 13202
 (315) 474-4603 - (315) 482-4002
 April 29, 1976

Hon. Edmund Port
 U. S. District Judge
 Federal Building
 Auburn, New York

Re: U.S. -v- Cannone, et al.
 74-CR-142
 74-CR-144

Dear Honorable Sir:

Pursuant to the notice of the Clerk of the Court dated April 21, 1976, I hereby apply for a continuance in the above entitled matter for the reason that the Government has not yet fully complied with the discovery and inspection in this case.

In particular, the Government has not yet made all of the recordings and transcripts of recordings of telephone intercepts available to the defense; has not yet provided the particulars as to the dates, times and places of the events charged in the indictment; has not yet provided the defense with exculpatory evidence; and has not yet provided the defense with all of the intercept orders and supporting affidavits relating thereto.

Very truly yours,

LOVE, BALDUCCI & SCACCIA

By:

Dante M. Scaccia

DMS:jmb
 cc: Office of the Clerk
 cc: United States Attorney
 bcc: James P. Shanahan, Esq.
 ✓cc: Charles W. Avery, Esq.
 bcc: Michael A. Wineburg, Esq.

LETTER from Charles W. Avery, Esq. to Hon. Edmund Port, dated 4-30-76.

CHARLES W. AVERY

ATTORNEY at LAW

Telephone Area Code 315 253-0309

P.O. Box 684

188 Genesee Street

Auburn, New York 13021

April 30, 1976

Hon. Edmund Port
U.S. District Judge
Federal Building
Auburn, New York 13021

Re. U.S. -v- Jon N. English, et al.
74-CR-142

Dear Judge Port:

Pursuant to the notice of the Clerk of the Court dated April 21, 1976, on behalf of Jon N. English, please be advised that I will apply for a continuance in the above entitled matter at the calendar call on May 4, 1976.

The reason for this application is that the Government has not yet complied with the discovery and inspection order of this Court. In particular, the Government has not yet made available to the defendant the recordings and transcripts of recordings of telephone intercepts has not yet provided the particulars as to the dates, times and places as to the evidence charged in the indictment and has not yet provided the defense with exculpatory evidence.

As an additional reason for the continuance, it is respectfully pointed out that although the Government has agreed to provide copies of the intercept orders and supporting affidavits, the Clerk of the Court has advised that said affidavits and orders are sealed by order of this Court and permission of this Court will be necessary before the defense can obtain a copy. It is intended that an application for the Court's permission in this respect will be made at the call of the calendar.

As a further reason for the application for a continuance, it is respectfully pointed out that pre-trial motions may be justified by the discovery matter ordered to be made available but not yet given to the defense.

Very truly yours,

CHARLES W. AVERY
Attorney for Jon N. English

CWA:pcd
cc: Office of the Clerk
cc: United States Attorney
bcc: James P. Shanahan, Esq.
bcc: Michael A. Wineburg, Esq.

TRANSCRIPT OF U.S. ATTORNEY ADMITTING DISCOVERY NOT
COMPLETE, dated 5-4-76.

THE COURT: All right, proceed.

THE CLERK: United States of America
versus Frank Cannone, et al., 74-CR-142.

MR. CHALINSKI: Your Honor, may I proceed
first with this?

There have been applications for a
continuance. If I might explain where we stand: The
case was originally assigned to another attorney in our
office, and then reassigned to me back last fall when the
matter was up on appeal.

At the time of reassignment, the discovery
orders had been granted in the case, and it was my
understanding at that time, and substantiated, I must say,
that discovery had been completed.

I became aware last Thursday that it had
not, and I have made an effort to comply as far as possible.

As of this morning a Bill of Particulars
requested has been dictated and I expect to have them out
this afternoon. In matters that have not yet been furnished
to defense counsel, who were on this case at the time of
the original discovery order, a Bill of Particulars of
the dates and places of the unlawful gambling activities,
and exculpatory evidence, and the statements of the
Defendants, and everything besides that was offered to
defense counsel at that time.

TRANSCRIPT OF U.S. ATTORNEY ADMITTING DISCOVERY NOT
COMPLETE, "dated 5-4-76.

I notice in the motions for a continuance taking them in order, that Mr. Scaccia alleges that we have not provided the material and also alleges that we have not given him the opportunity to listen to the tapes or provide him with transcripts as ordered.

I have been advised by the F.B.I, agent on the case that all transcripts had been provided by defense counsel as ordered by you, prior to last fall.

Now, there are two new defense counsel who have recently been assigned since then on the case. Mr. Avery was assigned during February of 1976 and Mr. Weinberg was assigned last week. They have not yet completed discovery, or had an opportunity to listen to the tapes.

THE COURT: Now, Mr. Scaccia, can you hear the tapes at the same time as the newly assigned counsel hear them, and they will be made available to the newly assigned counsel? So that whether he has heard them previously or not is of no moment. It will be a repeat performance if it has.

On the other material, the statements, there is no reason why that cannot be readily procured and supplied to counsel, is there?

MR. CHALINSKI: I expect to have that out this afternoon, Your Honor.

THE COURT: All right. All discovery has been completed, and tapes made available for audition and before April 15th -- May 15th.

Now, this case is to be ready to proceed to trial on June 1st.

MR. CHALINSKI: Thank you, Your Honor.

MR. AVERY: There is one additional matter. The Government has not opposed our request for copies of the intercept orders in this case. But we have been advised by the Office of the Clerk of the Court that they are sealed by Order of the Court.

THE COURT: Yes.

MR. AVERY: We would therefore request --

THE COURT: Any objection?

MR. CHALINSKI: No, Your Honor.

THE COURT: All right. The Clerk is directed to unseal the tapes for the purpose of examination by the defense counsel. This case shall be ready to go to trial on June 1.

MR. AVERY: Thank you.

MR. WEINBERG: Thank you.

MR. SCACCIA: Thank you.

MR. CHALINSKI: Thank you.

(Whereupon, the proceedings in the above-entitled matter were concluded.)

LETTER from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to Charles Avery, Esq., dated 5-5-76.

United States Department of Justice

UNITED STATES ATTORNEY

NORTHERN DISTRICT OF NEW YORK

FEDERAL BUILDING

SYRACUSE, N. Y. 13201

IN REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

May 5, 1976

Charles Avery, Esq.
Attorney for Jon N. English
Post Office Box 684
188 Genesee Street
Auburn, N. Y. 13021

RE: United States v. CANNONE, ET AL.
74-CR-142

Dear Mr. Avery:

Enclosed please find the Government's Response to the Order dated March 11, 1975 relating to a Bill of Particulars and discovery in the above-captioned case. You will be provided with a copy of that part of the transcripts of the wiretap intercepts in the above-captioned case which contain statements by your client, Jon N. English. The tape recordings will be available for listening by defense counsel commencing at 10:00 A.M., on May 6, 1976. Please advise if you desire to listen.

Please advise if it is your position that the Order of Judge Port requires additional discovery than that provided herewith.

Very truly yours,
JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

Enclosures
AAC/vam



LETTER from Arthur A. Chalenski, Jr. to Attorneys for Defendants,
dated 5-12-76.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

UNITED STATES ATTORNEY

NORTHERN DISTRICT OF NEW YORK

FEDERAL BUILDING

SYRACUSE, N. Y. 13201

May 12, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N.Y. 14203
Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci and Joseph N. Maruca

✓ Charles W. Avery, Esq.
P.O. Box 684
188 Genesee Street
Auburn, N.Y. 13021
Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
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306 S. Salina Street
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Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna. 18840
Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P.O. Box A
Auburn, N.Y. 13021
Attorney for defendant, Thomas J. Abbadessa

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, N.Y. 13905

Re: United States v. Frank Cannone, et al.
#74-CR-142

Gentlemen:

Enclosed please find a copy of the following reports
of the FBI Laboratory constituting scientific tests in the



*LETTER from Arthur A. Chalenski, Jr. to Attorneys for Defendants,
dated 5-12-76.*

above-identified case:

<u>Date</u>	<u>Page Numbers</u>
August 5, 1974	54-67
August 19, 1974	79-94
August 26, 1974	2&3
September 25, 1974	35&36
October 10, 1974	48-53

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

AAC/pm
Encls.

81

LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

May 20, 1976

Charles W. Avery, Esq.
P.O. Box 684
188 Genesee Street
Auburn, N.Y. 13021
Attorney for defendant, Jon N. English

Re: United States v. Frank Cannone, et al.
#74-CR-142

Dear Mr. Avery:

Enclosed please find a copy of an NCIC Report which this
office received on May 18, 1976 relative to your client identified
above.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

AAC/pm
Enc.



81A

LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

CR74-0947/AAC

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

June 22, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N. Y. 14203

Attorney for defendants, Frank S. Cannone
Stanley A. Reppucci,
and Joseph N. Maruca

Charles W. Avery, Esq.
P. O. Box 684
188 Genesee Street
Auburn, N. Y. 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, New York 13202

Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna. 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P. O. Box A
Auburn, N. Y. 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, N. Y. 13202

Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, N. Y. 13905

Re: United States v. Cannone, et al.
#74-CR-142



81B

*LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.*

Enclosed please find a photocopy of a file copy
of each of the following search warrants dated
June 17, 1974:

The persons of: STANLEY A. RAPPUCCI,
THOMAS A. GAETANI,
JOSEPH N. MARUCA,
JON N. ENGLISH,
EUGENE D. SCHIAPPA,
ROGER L. EVANEK,
JOYCE EVANEK,
CARMEN C. DELANZO
JAMES W. MCGRATH,
RAYMOND D. MASCIARELLI

The premises located:

in Room #4, Vestal Motel, Vestal Parkway East,
Vestal, New York

In a one and one-half story, single family
residence having white cedar shake siding with
brown trim and attached single car garage located
at 820 Morelando Drive, Endicott, N. Y.,

On the second floor of a two story, two-family
frame dwelling, painted blue and white and
situated at 52 Rotary Avenue, Binghamton, New York,
which second floor premises has an entrance on the
south side of the building,

On the first floor of a four story red brick building,
the first floor being painted white, and situated
at 229 Chehango Street, Binghamton, New York,

In the basement apartment of a two-story
residence having tan colored asbestos brick
siding, at 24 Lisle Street, Binghamton, New York,
which basement premises has an entrance on the
east side of the building.

We still have not been able to uncover any filed
copies showing the return on the warrants or the inventory
filed with same.

AAC/vam
Enclosure

Very truly yours,
JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

*LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.*

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

**UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201**

CR74-0947/AAC

June 25, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N.Y. 14203

Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci,
and Joseph N. Maruca

✓ Charles W. Avery, Esq.
P.O. Box 684
188 Genesee Street
Auburn, N.Y. 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, New York 13202

Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna. 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P.O. Box A
Auburn, N.Y. 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, N.Y. 13202

Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, N.Y. 13905



81D

LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.

Re: United States v. Cannone, et al.
74-CR-142

Gentlemen:

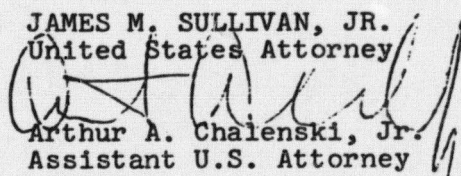
Enclosed please find one copy of each of the
following receipts for seized goods dated June 17, 1974:

- 1) 52 Rotary Avenue
Binghamton, N.Y.
- 2) 24 Lisle Street
Basement Apt.
Binghamton, N.Y. signed by Carmen DeLenzo
- 3) 820 Morelando Drive
Endicott, N.Y.
- 4) Room 4 - Vestal Motel
Vestal, N.Y.
- 5) 229 Chenango Street
Binghamton, N.Y.

I am advised that the Clerk has still been
unable to locate the inventory and search warrants filed
on or about June 17, 1974. The inventory, however, should
correspond in the description of items seized to the receipts
attached hereto, and under the circumstances, these receipts
should constitute the best evidence of what was seized.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney


Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

AAC/pm

Enc.

81E

*LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.*

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE:

CR74-0947/AAC

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

June 30, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, N.Y. 14203

Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci,
and Joseph N. Maruca

✓ Charles W. Avery, Esq.
P.O. Box 684
188 Genesee Street
Auburn, N.Y. 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 S. Salina Street
Syracuse, New York 13202

Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, Penna, 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
P.O. Box A
Auburn, N.Y. 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, N.Y. 13202

Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, N.Y. 13905



81F

*LETTERS from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Defendants' Counsel (4 letters), May 20 - June 30, 1976.*

Re: United States v. Cannone, et al.
Criminal No. 74-CR-142

Gentlemen:

Enclosed please find a copy of a Report of the FBI
Laboratory dated May 18, 1976 relating to specimens received
on May 14, 1976 in the above-identified case.

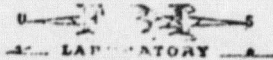
Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

Arthur A. Chalenski, Jr.
Assistant U.S. Attorney

AJ 2/pm
F .

LAB REPORT, dated 5-18-76.

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

To: SAC, Albany (165-49)

May 18, 1976

FBI FILE NO. 165-337

LAB. NO. D-760514045 IL

Re: FRANK SALVATORE CANNONE;
ET AL
ITWI - IGB - OOJ

Specimens received 5/14/76

- Q27 One Tropicana Hotel document numbered 63513, bearing signature "John Spiga"
- Qc28 Photocopy of Credit Record, dated 2/6/74, in the name of "John Spiga"
- Qc29 Photocopy of Credit Record, dated 2/6/74, in the name "Stanley A. Reppucci"

Result of examination:

No conclusion was reached whether STANLEY ALFONSO REPPUCCI, FBI number 659863N3, prepared any of the questioned writing on Q27 through Qc29 because of variations in the "Stanley A. Reppucci" signature on Qc29 which could not be accounted for based on the limited writing available on fingerprint cards and because the other questioned writing on Q27 through Qc29 is not sufficiently comparable in letters and letter combinations with the limited writing available for the aforementioned individual.

Q27 through Qc29 are returned herewith.
Photographs are retained for possible future comparison purposes.

LETTER from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Attorneys for Defendants, dated 7-1-76.

United States Department of Justice

IN REPLY
PLEASE REFER
TO OUR FILE.

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF NEW YORK
FEDERAL BUILDING
SYRACUSE, N. Y. 13201

CR74-0947/AAC

July 1, 1976

Harold J. Boreanaz, Esq.
736 Brisbane Building
Buffalo, NY 14203

Attorney for defendants, Frank S. Cannone,
Stanley A. Reppucci
and Joseph N. Maruca

Charles W. Avery, Esq.
Post Office Box 684
188 Genesee Street
Auburn, NY 13021

Attorney for defendant, Jon N. English

Dante M. Scaccia, Esq.
300 Wilson Building
306 So. Salina Street
Syracuse, NY 13202

Attorney for defendants, Raymond D. Masciarelli
and James W. McGrath

Michael J. DeSisti, Esq.
101 Hayden Street
Sayre, PA 18840

Attorney for defendant, Andrew J. Quinlan

Michael A. Wineburg, Esq.
Metcalf Plaza
Post Office Box A
Auburn, NY 13021

Attorney for defendant, Thomas J. Abbadessa

James P. Shanahan, Esq.
422 University Building
Syracuse, NY 13202

Attorney for defendant, Lawrence Schultz

Mr. Thomas A. Gaetani
52 Rotary Avenue
Binghamton, NY 13905

Re: United States v. Cannone, et al.
#74-CR-142



LETTER from Arthur A. Chalenski, Jr., Assistant U.S. Attorney to
Attorneys for Defendants, dated 7-1-76.

US v Cannone, et al.
#74-C 42

-2-

July 1, 1976

Gentlemen:

Enclosed please find a copy of the original search warrants with inventory as follows:

The persons of: STANLEY A. RAPPUCCI,
THOMAS A. GAETANI,
JOSEPH N. MARUCA,
JON N. ENGLISH,
EUGENE D. SCHIAPPA,
ROGER L. EVANEK,
JOYCE EVANEK,
CARMEN C. DELANZO
JAMES W. MCGRATH,
RAYMOND D. MASCIARELLI

The premises located:

in Room #4, Vestal Motel, Vestal Parkway East,
Vestal, New York

In a one and one-half story, single family residence having white cedar shake siding with brown trim and attached single car garage located at 820 Morelando Drive, Endicott, N. Y.,

On the second floor of a two story, two-family frame dwelling, painted blue and white and situated at 52 Rotary Avenue, Binghamton, New York, which second floor premises has an entrance on the south side of the building,

On the first floor of a four story red brick building, the first floor being painted white, and situated at 229 Chenango Street, Binghamton, New York,

In the basement apartment of a two-story residence having tan colored asbestos brick siding, at 24 Lisle Street, Binghamton, New York, which basement premises has an entrance on the east side of the building.

Very truly yours,

JAMES M. SULLIVAN, JR.
United States Attorney

AAC:kr
Enclosures

Arthur A. Chalenski
Assistant U. S. Attorney

BILL OF PARTICULARS AND DISCOVERY INFORMATION Submitted on Behalf of the United States in Response to Attorney for Defendant English, dated 5-5-76.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

V.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASCIARELLI, JAMES W. McGRATH,
ANDREW J. QUINLAN and THOMAS J. ABBADESSA,

Defendants.

Criminal No.
74-CR-142

BILL OF PARTICULARS
AND
DISCOVERY INFORMATION

The UNITED STATES OF AMERICA, pursuant to the Order of this Court dated March 11, 1975, says:

1. The illegal gambling activity alleged in the above described indictment took place in more than one location, and at the addresses and for the dates set forth in EXHIBIT A, attached hereto.
2. The relevant statements by the defendant, JON N. ENGLISH, are set forth in Forms FD-302 bearing interview dates November 19, 1974, pages 41 - 2, a copy of each of which is attached hereto. In addition, said defendant made statements which are included in tape recordings made pursuant to wiretap intercepts in the above-captioned case, which tape recordings are available for listening in whole or in part by defense counsel. In addition, portions, but not all, of said tape recordings have been transcribed and said transcripts are available to defense counsel for his inspection and copying. A copy of that portion of the transcripts which contain statements of said defendant will be provided to defense counsel.

BILL OF PARTICULARS AND DISCOVERY INFORMATION Submitted on Behalf of the United States in Response to Attorney for Defendant English, dated 5-5-76.

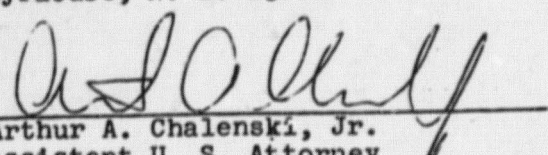
3. A copy of the criminal record of the defendant, JON N. ENGLISH, is attached hereto; said copy showing the last date under the "Arrested or Received" column of March 22, 1972.

4. The Government is not aware of any exculpatory evidence with reference to the defendant, JON N. ENGLISH.

Dated: May 5, 1976.

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Building, P.O. Box 1258
Syracuse, N. Y. 13201

By:


Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

BILL OF PARTICULARS AND DISCOVERY INFORMATION Submitted on Behalf of the United States in Response to Attorney for Defendant Masciarelli, dated 5-5-76.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	Plaintiff,	)	
		)	
V.		)	Criminal No.
		)	<u>74-CR-142</u>
FRANK S. CANNONE, STANLEY A. RAPPUCCI,		)	
THOMAS A. GAETANI, JON N. ENGLISH,		)	
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,		)	
ANTHONY R. SANTACROSE, JR.,		)	
RAYMOND D. MASCIARELLI, JAMES W. McGRATH,		)	
ANDREW J. QUINLAN and THOMAS J. ABBADESSA,		)	
	Defendants.	)	

BILL OF PARTICULARS
AND
DISCOVERY INFORMATION

The UNITED STATES OF AMERICA, pursuant to the Order of this Court dated March 11, 1975, says:

1. The illegal gambling activity alleged in the above described indictment took place in more than one location, and at the addresses and for the dates set forth in EXHIBIT A, attached hereto.

2. The relevant statements by the defendant, RAYMOND D. MASCIARELLI, are set forth in Forms FD-302 bearing interview dates July 3, 1974, page 109, and November 19, 1974, pages 43-44, a copy of each of which is attached hereto. In addition, said defendant made statements which are included in tape recordings made pursuant to wiretap intercepts in the above-captioned case, which tape recordings are available for listening in whole or in part by defense counsel. In addition, portions, but not all, of said tape recordings have been transcribed and said transcripts are available to defense counsel for his inspection and copying. A copy of that portion of the transcripts which contain statements of said defendant has been provided to defense counsel.

BILL OF PARTICULARS AND DISCOVERY INFORMATION Submitted on Behalf of the United States in Response to Attorney for Defendant Masciarelli, dated 5-5-76.

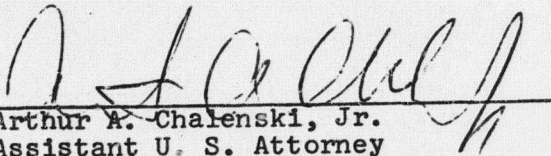
3. A copy of the criminal record of the defendant, RAYMOND D. MASCIARELLI, is attached hereto; said copy showing the last date under the "Arrested or Received" column of December 10, 1974.

4. The Government is not aware of any exculpatory evidence with reference to the defendant, RAYMOND D. MASCIARELLI.

Dated: May 5, 1976

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Building, PO Box 1258
Syracuse, New York 13201

By:


Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

**BILL OF PARTICULARS AND DISCOVERY INFORMATION Sub-
mitted on Behalf of the United States in Response to Attorney for De-
fendant McGrath, dated 5-5-76.**

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK S. CANNONE, STANLEY A. RAPPUCCI,
THOMAS A. GAETANI, JON N. ENGLISH,
JOSEPH N. MARUCA, VINCENT N. CHRISTINA,
ANTHONY R. SANTACROSE, JR.,
RAYMOND D. MASCIARELLI, JAMES W. McGRATH,
ANDREW J. QUINLAN and THOMAS J. ABBADESSA,

Defendants.

Criminal No.
4-CR-142

BILL OF PARTICULARS
AND
DISCOVERY INFORMATION

The UNITED STATES OF AMERICA, pursuant to the Order of this Court dated March 11, 1975, says:

1. The illegal gambling activity alleged in the above described indictment took place in more than one location, and at the addresses and for the dates set forth in EXHIBIT A, attached hereto.

2. The relevant statements by the defendant, JAMES W. McGRATH, are set forth in Forms FD-302 bearing interview dates June 17, 1974, pages 51 - 53, and November 19, 1974, pages 34 and 34a, a copy of each of which is attached hereto. In addition, said defendant made statements which are included in tape recordings made pursuant to wiretap intercepts in the above-captioned case, which tape recordings are available for listening in whole or in part by defense counsel. In addition, portions, but not all, of said tape recordings have been transcribed and said transcripts are available to defense counsel for his inspection and copying. A copy of that portion of the transcripts which contain statements of said defendant has been provided to defense counsel.

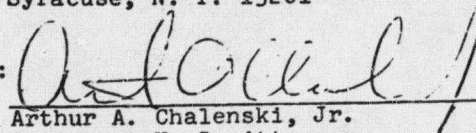
BILL OF PARTICULARS AND DISCOVERY INFORMATION Submitted on Behalf of the United States in Response to Attorney for Defendant McGrath, dated 5-5-76.

4. The Government is not aware of any exculpatory evidence with reference to the defendant, JAMES W. McGRATH.

Dated: May 5, 1976.

JAMES M. SULLIVAN, JR.
United States Attorney
Federal Bldg., PO Box 1258
Syracuse, N. Y. 13201

By:


Arthur A. Chalenski, Jr.
Assistant U. S. Attorney

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

18

jump in the number sequence, and then to 60, and 64, and half of 65, and 67, and then it jumps up to 80, and then there are both handwritten numbers, as well as typed numbers, Judge, and for example handwritten five, and handwritten six, and then underneath that there is typed 86 and then 87, and then it jumps back to -- September 25th of 1974 and then you have a series starting 35, and 36, and then it jumps up to October with, again, typed 48, and handwritten numbers below that and then in some cases the pages don't contain any number at all on the bottom, and then you pick up 51, and these are the pages, Judge, and I can hand them up to the Court, and it is a simple matter.

THE COURT: I may accept Mr. Chalinski's offer to review his file, and I would like to view yours at the same time.

MR. SCACCIA: Yes, Your Honor.

THE COURT: I will hold them, and perhaps we can get to the other motions that had been made here.

I think that you also have a motion with regard to the speedy trial, and I think that you wanted to get to that, Mr. Scaccia?

MR. SCACCIA: May I argue that now?

THE COURT: Surely.

MR. SCACCIA: If it please the Court:

As I understand the authority of *Barker against Wingo*, which obviously is the leading Supreme Court decision in this matter, and concerning which the United States Court of Appeals only a week ago decided, the United States against *Vispi*, and the triggering mechanism in a speedy trial occurs with respect to the lapse of time, and the lapse of time does not have to be rigid, as in point of fact, and in point of law, it is not rigid, and this, understandably is a relevant matter.

In *Vispi*, the time lag that triggered the events that caused the Court to explore and examine and evaluate the additional factors, other than the delay happened to be 20 months.

In this case, I apologize for the inadvertence and I said that the indictment date was November 17th, Judge, and I was looking at the date of the indictment, and not the date it was filed, but it was filed the next day, November 18, 1974.

So in that sum, we have a two-year period, a 24-month delay in this case in being brought to trial. I quite agree with the Government in its response, and in its memorandum, when it makes much of the statement contained in *Barker against Wingo* that it is not enough for time to have transpired so that a time delay is present in any case, but a Defendant, a criminal

Defendant is required to make some assertion, to make some protestation as to speedy trial. I quite agree.

In this case I argue, Your Honor, that that precise objection was made known almost at the outset. In this particular case, the indictment was handed down and filed November 18, 1974. The Defendants were all arraigned on the 10th of December, 1974, before Judge Port, and at that time, Judge Port imposed the time limitation which was with respect to discovery material, and delayed the motions that had to be filed by all of the Defendants, and that time period was a short one, it was two weeks, Judge.

So that all of the Defendants had to file all of their motions on or before December 24th, 1974. And all of the Defendants complied with that time requirement. The motions were returnable before Judge Port January 13th, I believe, of 1975, and the Government, as I recall, had to file its response by January 7th, a week before the return date.

On January 31st, Judge Port decided the motion for discovery from the bench. I won't go into the reservations with respect to suppression of wire tap information, because that had yet to be disclosed by the Government. But Judge Port decided then, and required the Government to provide to the defense the

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

21

discovery material within ten days, and obviously, if my recollection of January 13th is correct, that would mean on or about January 23, 1975, discovery material had to be provided, and I am now reading from the transcript of January 13th, 1975, and it happens to have been printed, Judge, because the Government had taken, had taken an appeal from one provision of Judge's interlocutory offer.

The transcript of January 13th, 1975 sets forth that the Government was to provide the discovery material within ten days. They did not, in any respect.

On January 31st, 1975, at the Federal Court session in Utica, Your Honor, before Judge McMahon, the Government moved this case, 74-CR-142 for trial, and I appeared before Judge McMahon on that date, and the transcript of the January 31st, 1975 proceeding before Judge McMahon is here, and the Government disclosed that the reason they -- number one, I pointed out to the Court that manifesting in justice and incorrectness on the part of the Government in moving a case for trial, and if the Government was not ready for trial to its own knowledge, and giving the fact that they had provided no discovery material to any of the Defendants.

Mr. Lowe: the assistant, appeared on behalf

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

of the Government and indicated to the Court that Mr. Welch, who had previously been assigned to the case was ill, and that he, Mr. Lowe, had been reassigned to the case, and incidently, the Clerk's docket reflects the reassignment.

More over, that pre-trial discovery would go forward, and would be completed within the next couple of weeks, and I am looking at records 103 of the appendices that went to the U.S. Court of Appeals, and I am referring to the transcript of the proceedings before Judge McMahon that took place at Utica on January 31, 1975.

At that time on the record, Your Honor, I not only made the Court aware of the uncomplied with Discovery Order of Judge Port that the Government had not yet complied with in any respect, and the Government was not, in point of law, in fact, ready but more over that time delay limitations should not run or be charged or attributed to any of the Defendants because it was the Government that was failing in its obligation to fulfill the discovery material, and none of the Defendants. The Order had already been decided in total by Judge Port. I also brought up the matter at that time and place, and on Page 104 of the record, that we were moving -- with respect to the time delay not being

attributable to the defense, Judge McMahon stated that that matter was for the trial Judge to determine, and was referring it to whoever the trial Judge would be, and no one knew then who that would be.

So much for January 31st, Your Honor.

MR. AVERY: Your Honor, would you care to have a copy of the transcript while it is being referring to (offering to Clerk)?

THE COURT: Yes, I would. Thank you.

MR. SCACCIA: I was referring to Pages 103, 104 and 105, Your Honor. So much for the events of January 31, 1975.

At that stage, on behalf of Masciarelli, I was specifically making known our desire for early trial.

February comes and goes and we hear nothing from the Government, although counsel, a number of the defense counsel had made telephone calls, and some made personal visits I am told by them, and some sent letters to the Government requesting and pressing for the discovery material that was due us.

Nothing was furnished except a Notice moving the case for trial at the Albany term of the United States District Court before Judge Foley on March 4, 1975, and that is reflected in the record of the

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

24

transcript at Pages 106, in the record.

At that time, another United States Attorney appeared, and I think his name was Dreyer -- I am not sure -- and he indicated that the Government was ready and moving the case for trial; and I again had to make my argument that the Government was not, in fact and in point of law, ready for trial, and that the Defendants were all due discovery material from the Government, and that no discovery material had been furnished to any of the Defendants, and I had canvassed all of the defense counsels.

More over, to set the argument in the proper perspective, Judge, and at that time, the cases that appeared on the criminal calendar ahead of this one, United States against Cannone, there were directions by the Court as the case was called by the Clerk, and the Government would answer ready, or whether the case was to be adjourned over, or whatever the agreement was, and in each case Judge Foley was attributing time delay to the defense, or whoever.

This was totally new to me, and when our case was reached I made a point of again, in that context, informing the Court that we were entitled to discovery material and no discovery material had been provided any of the Defendants, and we were all pressing for it,

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

25

and raising a question as to the attribution of the time delay, and moving affirmatively that in no case should any of the time delay be attributed to any of the defense because they were not responsible; the Government was.

The short of it was that Judge Foley, hearing the arguments and statements, referring the entire matter to Judge Port, who was to sit at a motion session, United States District Court here in Syracuse, and that session took place March 10th, 1975, and that is reflected in the report before Your Honor in Pages 119, of the record, and particularly beginning at Page 122, and during the course of that colloquy again I pointed out to Judge Port that none of the discovery material that he had ordered back in January had been furnished by the Government, nor had any explanation been given by the Government for its failure to furnish and produce the discovery material. At this time, Gene Welch was back on the case and apparently, and he was there, and he argued and the short of it was that the Judge asked as to whether this was correct, and Mr. Welch indicated that it was correct and incidently, Judge, the Government in addition to furnishing all of the material was also supposed to prepare the Order because they, and only they knew what the itemization and

description and materials were.

They had failed to prepare an Order, and failed to furnish any disclosure and discovery, and with that, on March 10, 1975, among other things, Judge Port indicated that he would prepare the Order and, number two, that the Government was to provide the disclosure material within five days and, number three, that the case was to be marked as number one at the May term at Auburn, and this was May of 1975.

Now, it is true that after Judge Port did prepare his Order within a few days, I think it was only a day or two later, he did specifically require the Government, among other things, to furnish the Defendants with the addresses of all of the Government's witnesses in advance of trial.

During March and April of 1975 the Government made motions on the one hand seeking to have the Court recover its directions with respect to disclosure of Government witnesses, and the Court heard arguments and denied the motion for rearguments, and reconsideration and subsequently on or about May 1, 1975, the Government moved that Judge Port amend his discovery order to impose sanctions so that it would then be an appealable order in as far as the disclosure requirement was concerned, and Judge Port granted that

motion.

Judge Port modified his March and April 1975 Orders to require that the Government produce and furnish to the Defendants the identities of the Government witnesses on or before May 9th, 1975, and failing which the testimony of any witnesses not so disclosed, the identity of witnesses not disclosed, that the testimony of those witnesses would be excluded from trial.

And then in turn that gave rise to an Order to Show Cause that issued on the Government's request and it appears at Page 223 of the record, the May 15, 1975 Order of Judge Port, in which a stay was granted the Government, pending a Government's appeal under 3731 of Title 18 U.S.C., so that they could take an immediate appeal to the United States Court of Appeals.

It is significant, Your Honor, that the only affect of the stay specifically related to the Order is requiring pre-trial disclosure of the Government's witnesses, and no other discovery, or disclosure material was stayed.

In any event, that appeal was argued, and the Government's -- I won't go into the merits. Judge Port's decision was reversed as to the requirement that the Government furnish the Defendants with the identity

of the Government's witnesses, that all other portions of the discovery material and the discovery orders remained intact because it had not been appealed, and therefore it was the law of the case.

The Order to Show Cause and the final Order, the stay, specifically by its terms, stayed the Government from moving both U.S. against Cannone, 74-CR-142, as well as against Masciarelli, which was a companion case with it, and 74-CR-144, which was dismissed a couple of weeks ago by Judge Port.

The Court specifically stayed the trial of those two cases until the future mandate and Order of Judge Port, based upon the mandates of the U.S. Court of Appeals.

Notwithstanding that, Your Honor, notwithstanding that the appeal was heard in September, 1975, and it was decided within a month, and the Government then petitioned for a rehearing, and that was denied, and the Court did excise some language from its final opinion, and the -- it affirmed the decision of the panel, and despite this, despite the fact that the Government was subject to a stay that it, itself, had requested, and that Judge Port had granted removing either cases 142 or 144, in March of 1976 before Judge Port had even received the mandate back from the Court,

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

29

the Government again was up to its device, and they were moving both cases for trial at Albany.

That was before Judge Foley, and in the meantime, they had also obtained a number of other indictments involving that Cannone was a common Defendant in these cases and I won't go into that, but Judge Foley as I recall it, the first time I met Mr. Avery, he had just been assigned to the case, and he appeared and I appeared, and the weather was dreadful.

Judge Foley, on his own motion, indicated that he had familiarity with the general background of these matters, and he knew that the case had to be the Court of Appeals, and that Judge Port had jurisdiction with respect to the cases following the mandate, which had not yet been handed down, and ordered them off the calendar, and that they should be brought before Judge Port, and that was done.

Now, that is March of 1976, this year. In May of 1976 we learned that Judge McMahon was to be the trial Judge, and in the meantime as I recall, it was March 24, 1976, that Judge Port signed the Order following the remand of it based on the mandate from the United States Court of Appeals, and the case was moved for trial at the May term at Auburn, and Judge McMahon was assigned as the designated or the trial Judge, and in the

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

30

course of the colloquy with Judge McMahon several of the then newly assigned counsel were given the expressed permission to make motions with respect to suppression, in addition to the previously retained counsel, and given the fact that no discovery material had been furnished, the Court entertained all of these motions at that time.

As the record shows, it wasn't until May of 1976 that the Government for the first time began to piecemeal furnish us with information from the gambling reports, and again for the first time to provide counsel with all of the applications and orders and affidavits with respect to the suppression motion involving wire interception, and for the first time, that during the course of those arguments before Judge McMahon, and it is on the record, the Government disclosed that the search warrants and applications with respect to search warrants, insofar as the physical evidence had been seized, could not be found or located.

That precipitated a very intense search, and so much so that the Government moved, and Judge McMahon granted an Order permitting the Clerk's office to open up MP15, 16 and 17, and all of those Orders that had been sealed and then when the Clerk reported back that he could not find them, as I recall, and it was left

with Dr. Dogget, if I refresh my recollection, and he permitted the Clerk to open all subsequently sealed files just by the chance that perhaps by mistake that the papers involved in our case might have been sealed with some other case, and that was done.

It wasn't until about the end of June, Judge, that we learned for the first time from Mr. Chalinski that the search warrants and the returns, the originals, were located in Judge Port's chambers. What those circumstances were at this point, I still don't know.

Up to that point we had been making motions, and we specifically reserved our rights to make motions with respect to the physical evidence and Judge McMahon granted all counsel that right, given the entire situation, and among other things, I, on the Government's admission, struck down the third wire tap order, PM17 with respect to one of the Defendants, and that was Abbadessa, and during the course of that discussion, as to whether Abbadessa should be severed or not, we indicated -- it was in that context, that we learned for the first time that the papers had been found in Judge Port's chambers, and we indicated to Judge McMahon that we obviously were not going to insist on Judge Port taking the stand and testifying as to the location, and the whereabouts of the

papers.

However, we were reserving with respect to the content of whatever was found, and Judge McMahon gave us that right. As a matter of fact, if my memory serves me correctly, Judge, it was at that point or juncture that Judge McMahon turned to Mr. Chalinski and directed him to go to trial in this case, and it was then, in that context and that time that the Government for the first time, made a disclosure to the Court, or to defense counsel, that the gambling witness expert had retired and was not available, and it was central to their case, and they were bringing and assigning a new man to the case.

All of we, defense counsel did not -- none of us made any strong objection at that point, and just as Judge McMahon was making our arguments strongly enough for us, and if I recall, he even said that if we made a motion then to dismiss this because of the speedy trial, he would grant it.

We waited until the material was furnished and as I indicated over the summer, Judge, and right up until September, and as Your Honor knows, right up to a week or so ago, the material is still being furnished to us. A surprise, a daily or weekly surprise has been furnished to us.

Now, we understand from the Government that not only does it not make a clear forthright statement that it is not in point of fact ready, it never was ready, and I say to you that all of this was to the -- was by design on the part of the Government to gain a technical advantage, and to deprive defense counsel of discovery material so that they could properly and in a law like fashion prepare their defenses, and they have deliberately failed to comply with the discovery disclosure order, other than the disclosure of the Government witnesses, and they wait right up until today, November 29, 1976, and right up to this day they are resisting furnishing the material that the Court ordered them to furnish, that they agreed to furnish, and have not done so.

Now they want to make the claim that they are ready to go to trial. I say that all of the Defendants have been severely hampered and specifically the Defendant Masciarelli has been severely hampered in his defense. He has been clearly prejudiced.

Number one: Not only were we not permitted the disclosure of the witness's names so that we could interview and interrogate these people and find out what this case was all about, but the discovery material was prevented from being given to us by the Government by its own actions and its own delays.

We learned for the first time in May of 1976 that they were never, in point of law, actually ready for trial, although they had been filing Notices of Readiness, although they were forcing us to go from one end of the District to the other, pursuant to these Notices to Appear and set a date for trial.

Despite all of that, and with all of that, I say to Your Honor that Masciarelli has been clearly and specifically prejudiced in the preparation of his case. We are talking about a year and a half delay, and measuring roughly since March of 1975 when Judge Port indicated in the report that he would prepare his own Order, and directed the Government to furnish discovery material within five days, and all of this material was in existence on that date, Your Honor. This is not new material that has developed on a recent date, and the Government is furnishing in compliance of Rule 16, their continuing duty to comply, but this is all material that antedates the indictment, November 1974.

It has been in the possession of the Government, and they have been feeding it to us piecemeal, and I say in a deliberate and contrived evidence to seek a technical advantage, and deprive the Defendants a fair opportunity to prepare their case properly and effectively, and to prevent the defense counsel from

having materials that were specifically required by the Discovery Order, in order to properly and effectively prepare their defenses.

And all of this at a time and in a context when the Government was well aware that it was in point of fact, or in point of law saying it was ready for trial.

Then we move on to the other consideration under Barker against Wingo. Did the Defendants or any one of them make any protestation? I have already gone through the protestations made earlier on from January 31, 1975, materially, like through May 10, 1975 before three Federal Judges both in this District two of whom are really assigned and one was sitting by designation, and it is all a matter of record, and all three indicated that these matters as to the speedy trial should be brought to the attention of the trial Judge.

So, Your Honor, I am simply appealing in -- as a matter of justice and in the interest of justice that I feel that all defense counsel have been very diligent in this case, and they have pressed for trial, and pressed for discovery of discovery materials, and materials that have been ordered since at least March 10, 1975 and the Government has systematically and in an effort to obtain technical advantage, deprived

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS of 11-29-76
Re: First Speedy Trial Argument.

36

us of this opportunity, and they are continuing to do so even today.

As to whether or not the material has become stale or sterile, Mr. Avery and I went to Binghamton a week ago yesterday to interview a witness who we saw for the first time in the United States Attorney's office during the arguments on or about November 17. It was a week ago yesterday that we learned as to the identify of this witness and we asked to interview him and the agent indicated that he did not want to talk to us then, but if we would give our card, and Mr. Avery did, he would check with his lawyer and would let us know. That was done, and we went to Binghamton in that interest, and we had a very intense day.

We understand from the Government, in the response, that they have many witnesses. They made no disclosure and revelation either by the documents that they have in their own hands or other witnesses, so that all those they have voluntarily agreed to provide us with, much of this disclosure, including the expert's reports, I say to you that they have not done so and they have severely hampered our defense, and here we are two years after the indictment and trying to interview witnesses that we are learning about for the first time as a result of recent disclosure and, for example, the material that

Mr. Avery received only within the last ten days were we able to center in on a witness, and prepare an effective defense.

The material is stale. We learned that the witnesses' memories are extremely dim. Our own clients' memories are extremely dim. We have been hampered as a direct result of the Government's delays in bringing their case to trial, and that in turn was largely contrived by using the mechanism of failure to provide the discovery and disclosure material, actually and completely and timely, the material that they had in their possession since the date of Judge Port's order of March 10, 1975.

More over, insofar as cooperation is concerned, Your Honor, defense counsel, as both the Government and Mr. Avery have previously mentioned, came in from the District to participate in listening to the interceptions. For my part, I have no recollection that anyone permitted me to examine the transcripts, the typed transcripts of conversations other than my own client, or those lawyers who happened to be right there then. But I will leave that aside for the moment.

I specifically asked the Government to let us take the material out and we will copy it at our own cost and expense and return it to the Government. No,

that was not satisfactory. Will you copy it and furnish it to us? No, they won't. They took a firm position that they were not going to give us any material other than our own individual clients, and as far as I know right up until this week, and in the last few days, that is how it stood with the Government.

With respect to the motion on the speedy trial, as I understand it, Your Honor, we are specifically of course, making our argument and making our motion strictly on the Sixth Amendment deprivation, and violation of the speedy trial. But in aid of that Sixth Amendment argument, we have the United States against Vispi, and as I read it it was decided squarely on the Sixth Amendment basis, and it did not have to rely on the Speedy Trial Act of 1974, although it did refer and mention it, and it did not have to rely on the Western District's plan for the prompt disposition of the cases, although it did cite and refer to it. It rested its decision squarely on Sixth Amendment grounds, i.e., the information and the delay that occurred in that case, and the argument is post-indictment delay.

So I am arguing that the 24-month delay between the filing of the information in this case and the commencement of this trial clearly has violated Mr. Masciarelli's Sixth Amendment right to a speedy trial,

and I suggest and urge and argue that that is a very serious question, and that we do meet the test in Barker against Wingo, and that those factors as we know them are four: the length of delay which I have already gone into; the reason for the delay, which is entirely the Government and it is inexcusable in as far as the Government is concerned; the defendant's assertion of his rights, and he raised it at the different Courts before you three Judges between January and March of '75, and all three Judges indicated clearly on the record and fortunately we happen to have a record, that the matter should be presented and decided by the trial Judge.

And of course, finally and most important, the prejudice to the Defendant.

I say to you, Your Honor, in a case such as this and the Government has indicated its theory to it in its memorandum, where they are going to rely on a large number of witnesses who are going to testify, that they were betters with one or both of the Defendants and they are going to testify that the Defendants are bookmakers, who are going to testify that the Defendants are part of a conspiracy under 371 to violate the offense of 1955, and five or more under the Federal Gambling Offense, and that that imposes a very heavy burden on the defendant's lawyers, as well as the defendant's to

prepare their case.

We have done our very, very best and the very best has been to get the discovery material that Judge Port ordered from the start. It hasn't been provided to us and I urge, Your Honor, that given the 18 or 19 month's delay in furnishing us with the discovery material which we argue has not been done fully and completely even today that our defense and our preparation for the defense of these Defendant's has been severely prejudiced, and hampered and I sincerely and strongly move that the cases against the Defendants English and Masciarelli be dismissed because the Government has deprived both of these Defendants of their Sixth Amendment right to a speedy trial.

THE COURT: Thank you, Mr. Scaccia.

There is one other motion that is before us, and I think that Mr. Avery, you made that motion with regard to suppression of the evidence secured upon the issuance of a warrant?

MR. AVERY: Yes, Your Honor. One of the matters which we discovered when we were down to Binghamton on a Sunday a week or so ago was that the Broome County Court, the Hon. Stephen Schmidt had, by a decision dated October 25, 1976 --

THE COURT: But Mr. Avery, you supplied to

TRANSCRIPT OF UNITED STATES OPPOSITION OF FIRST
SPEEDY TRIAL MOTION AND SEARCH WARRANT SUPPRES-
SION MOTION of 11-29-76.

42

THE COURT: Thank you. Mr. Chalinski, do you have something that you wish to say? In response to any of this? Would you just tell me yes or no?

MR. CHALINSKI: Yes, just a couple of very short comments.

THE COURT: My problem is that we have the jury seated out there and let me talk with Mr. Dogget, our Clerk for a moment.

(Off the record discussion.)

THE COURT: Now, in view of the length of the arguments that we have had here, I think that I will let this jury go until 2:30 this afternoon, if you gentlemen don't mind and it is around a quarter of 12. I don't see how we can possibly get to selecting the jury at quarter after 12 even if we could get to it.

MR. SCACCIA: I agree, and I think that the Government will want to bring up the matter of the taps, too.

THE COURT: Well, we can do that even after the jury has been drawn, but I will, at this time, ask our Clerk to let the jury go and in the meantime I will hear Mr. Chalinski.

MR. CHALINSKI: I will be very brief. First, I object to the forwarding by Mr. Scaccia, and Mr. Avery to any fact about that argument, facts that

TRANSCRIPT OF UNITED STATES OPPOSITION OF FIRST
SPEEDY TRIAL MOTION AND SEARCH WARRANT SUPPRES-
SION MOTION of 11-29-76.

43

are not either in the affidavits or in the papers, the Defendants have had ample opportunity to prepare papers in support of their motion, and I strenuously object to the statements that concern activities that happened prior to the time, some of which I was not present at, and have no way of rebutting.

Secondly, with regard to any notification by Mr. Scaccia that he objects to delays in the case, I do not read the January 31st, 1975 transcript as indicating delay. I invite the Court's attention to Page 215 which involves the transcript of the hearing on May 13th, 1975 where the Court stated that the relief being sought is adjourned until trial in the above-captioned indictment as to these two cases, at least 15 days from the date of final results by the United States Court of Appeals.

The Court stated that no objections having been filed by any attorney for any of the Defendants, the relief is granted.

I invite the Court's further attention to Page 220, and that is Page 220 of the record on appeal, and about the middle of the page where the Court asks: Is there any objection to removing the case from the Calendar?

Mr. Scaccia said, "None on behalf of my client."

TRANSCRIPT OF UNITED STATES OPPOSITION OF FIRST
SPEEDY TRIAL MOTION AND SEARCH WARRANT SUPPRES-
SION MOTION of 11-29-76.

44

I believe that Mr. Scaccia should be bound by the statement that he made at that time that he was not pushing for a speedy trial on behalf of his client.

As to the activities before Judge McMahon in late July of 1976, there seems to be an inference that the Government was requesting a continuance at that time. The Government did not request a continuance when Judge McMahon asked if we were ready to go to trial. There was a jury waiting and I had been called for trial that morning on another case and, in fact, the Cannone case was not expected to be heard for the remainder of the term. Judge McMahon asked me if we could draw a jury in the Cannone case that very day and I stated that that would be impossible for the reason then stated. I did not request a continuance any further than that, Your Honor.

THE COURT: All right. Well, those are the three motions, I think, before the Court at this time. I do think that in view of some of the statements -- in view of some of the statements made at this time, and the offer of Mr. Chalinski, and Mr. Scaccia for the Court to view in chambers the F.B.I. file, and the reports that were given, I think that the Court would like to do that at this time before we draw the jury and

consecutively the fact is that the Government has submitted from what I can see, at any rate, all of the reports that bear upon the subject in question, that is, the gambling expert's report.

I can see where defense counsel would be disturbed by the fact that the papers do not run one, two, three, four and whatever. But that, also, they should know is not because the expert's report ran that way, but because the F.B.I. report did not run that way and the Government provided to defense counsel those portions of the F.B.I. report that bear directly upon that subject.

Now, there are two other motions that come before the Court and, very frankly, a couple of them disturb me. Let me go to the last one first, and that one is with regard to the speedy trial.

I understand counsel's argument in that line, and I have read the case out of Buffalo. It seems to me that that case does not apply to this one. That case had to do with a single defendant and, furthermore, I think that the time limit that this Court has retained by -- well, commenced on July 1, 1976.

In addition to that, it disturbed me a little, and I think that I said this ten days ago, whether or not the Government said they were ready or did not say they were ready in May or June or July, but the

fact is that this case was on for November 9, 1976 and a special jury was ordered in here for that purpose, with the knowledge of the Government and defense counsel and as far as I know, no argument to this effect came up and on the 17th, or whenever it was that this Court granted a continuance to today, that the Court said that any motions that defense counsel had to make specifically with regard to what they were talking about on that day could be made by the 22nd or 23rd of November.

This was not one of the motions that was being argued at that time, so that I feel that the motion is not timely and that defense counsel had ample opportunity to the many months before even this Court was appointed, to make that kind of a motion but did not make it. So, I am going to deny that motion.

Now, with regard to the motion for suppression of the evidence educed by the warrant: I find myself in some disagreement with the Broome County Court Judge. It may not be that he and I are talking about the same thing. I suspect that he was talking about a motion to suppress the use as evidence of a quantity of marijuana, and that is a little different situation than we have here.

Also, he totally ignored, I think, the statement at the end of Mr. Hazelwood's, the F.B.I. agent's

TRANSCRIPT OF HEARING ON DISCOVERY MOTIONS
Re: Government Expert.

dated May 5th. My response to Mr. Avery dated May 19th, and filed in this court on that date, provides that the Government has made the remaining transcripts, all of the tapes available for inspection and copying by the defendant. I received no demand, your Honor, for -- well, the tapes and transcripts were provided to defense counsel shortly thereafter and I received no demand that they be copied. It is as simple as that.

With regard to the expert's report: There will be another expert testifying at this trial, other than the one that rendered the original report to the Government. That expert has not given me a further written report. He has been reviewing the fact this week, and I have discussed the case orally with him and I have not requested that he provide me with a written report.

It is my opinion that to do that at this time for my use would be senseless and there is no requirement that it be done just for the defendant's use, in the law.

Mr. Avery this morning pointed

TRANSCRIPT Re: Computation of Time Request; referred to Trial Judge,
dated 1-31-75.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

FRANK S. CANNONE, etc. &
RAYMOND D. MASCIARELLI et al

74-CR-142 74-CR-144

APPEARANCES:

January 31, 1975

HONORABLE JAMES M. SULLIVAN
United States Attorney
GEORGE H. LOWE
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America

DANTE M. SCACCIA, ESQ.
Attorney for Masciarelli & McGrath
Syracuse, New York

MR. LOWE: Your Honor, all defense counsel in
this matter have submitted, I believe, written appli-
cations to the court to have the case put over the
term, and the basic thrust of the facts are correct
because of Mr. Welch's illness.

Pre-trial discovery in this matter has not been
able to go forward and I believe we are going to be
able to get at it within the next couple of weeks,
but it is complex and the Government is opposing the
application.

THE COURT: Off.

MR. SCACCIA: May I make one request, that none
of this time be charged against the defendants,

TRANSCRIPT Re: Computation of Time Request; referred to Trial Judge,
dated 1-31-75.

because we were under very severe time limitations set by Judge Port at the time of the arraignment, and all defense counsel met those time limitations carefully and realistically and we don't feel this time should be --

THE COURT: I don't feel I should pass on that. I will defer that to the trial.

MR. SCACCIA: O.K.

MR. LOWE: The same situation is true with regard to number 22, Your Honor.

MR. SCACCIA: May I add one thing. There is an additional defendant, Masciarelli, in case 22, I think his name is Schultz. Insofar as I know he has not been arraigned and I think perhaps he ought to be before that case is presented by the Government, it is a joint indictment --

THE COURT: That is up to the Government, I suppose, and the trial judge.

MR. SCACCIA: And there is another matter I should point out to Your Honor. Back in the Cannone case Judge Port after motion had severed Count III of the indictment. I don't know whether Mr. Lowe is aware of it. He may not be because he wasn't in charge of the case, but we had moved Count III be severed from the balance of the two counts, and I

point that out in the interests of justice.

THE COURT: I suppose there would be some docket entry to that effect?

MR. SCACCIA: There was, but the U.S. Attorney was supposed to prepare the order.

MR. LOWE: Because of Mr. Welch's illness I have begun a draft of that order and I hope it will be prepared this afternoon.

THE COURT: All right.

* * * * *

This is to certify that the foregoing proceedings took place on the 31st day of January, 1975, at the United States District Court, Federal Building, Utica, New York, before HONORABLE LLOYD F. MacMAHON, United States District Judge.

Official Reporter

THE COURT: Proceed.

MR. SCACCIA: I appear for the Defendants Masciarelli and McGrath. Also on the second, 74-CR-144 I appear for Masciarelli, alone.

However, I am authorized to speak for all of the Defense Counsel in the indictment, No. 74-CR-142, and I would like to make a statement to the Court to that effect.

If it please the Court, following the indictment in November of 1974, and pursuant to notice of all Defendants and their Counsel, the Defendants were all arraigned before Judge Port at the Auburn Session on December 10th, 1974. At that time and place, and by order of Judge Port, all motions were to be made on behalf of the defense, particularly discovery motions, were to be made and filed with the usual copies of the notices, to the Government Counsel, and the Clerk, and copies of all pleadings were to be in Judge Port's chambers at Auburn on or before December 24, 1974.

That is, we were given a two-week period just prior to Christmas in which to make all of our motions.

Those motions were made and they

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-4-75.

4

were returnable early in January before Judge Port at Syracuse; before Judge Port at Syracuse, Your Honor.

They were made, and they were filed, and they were argued, and the Court decided, on the same day, the day of the argument, and among other things the Court ordered extensive discovery to be provided to the defense by the Government.

Moreover, there was a motion with respect to a severance of, I think, two of the Defendants from the main indictment, Judge, with respect to one count. There was a Count 3 involving intimidation and beating up of a witness involving only two Defendants, and not in any way related to the balance.

In short, Judge Port, after argument, following argument severed that count, Count 3 from the Count 1 and 2 of the indictment.

THE COURT: Which indictment, and which Defendants?

MR. SCACCIA: That would be on 74-CR-142, Judge, and it is the Defendants --

THE COURT: There were several counts severed?

MR. SCACCIA: No, one count. This was a

three-count indictment and there were about eleven Defendants.

THE COURT: There was one count severed against several Defendants?

MR. SCACCIA: Yes, and moreover, the Government was instructed by the Court at that time and place to prepare the order of severance, in view of the fact that although it was not the prevailing part, that much of the documentation as to the wiretap, the logs, and the informants, and that sort of thing was best known to the Government, and not in possession of the defense, and therefore they were in a better position to itemize the materials in the proposed order.

That proposed order was to be prepared by Government Counsel within ten days, and submitted to the Defense Counsel for their inspection, and possible objection, with a copy going to the Court.

Judge, to this day, none of that has been done; absolutely nothing has been done by the Government except making a motion at the January Term, on January 31st, not having complied in any way with Judge Port's directions, despite repeated requests by Counsel and letters and

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-4-75.

calls by the like, and no responses from the Government of any kind, either telephonic, or letter, or by motion papers --

THE COURT: Mr. Welch is the Attorney, and he is generally very responsible about his work from my experience.

MR. SCACCIA: I am coming to that point very quickly.

The Government moved the case for trial at the Utica special trial section on January 31st, before Judge MacMahon. At that time the Assistant United States Attorney George Lowe, on the record, made -- and I will try to recall it the best I can, the substance of his remarks -- he made a statement to the effect that, number one, that Mr. Welch had been ill; that he, George Lowe, had taken over the case; that he could state for the record that none of the delay was chargeable to or attributable to the Defense, and it was entirely the Government's delay; and that moreover that he, George Lowe, and the Government would proceed promptly to comply with the preparation of the proposed order that had been ordered by Judge Port; and moreover it would begin to assemble and document all of the discovery materials and

proceed with dispatch.

To this day, Judge, we have heard nothing further, except this portion or this notice, or whatever, moving the case for trial, despite the fact we have a lawyer in Pennsylvania representing the Defendant who is trying to contact the Government. We have a lawyer in Buffalo representing several Defendants, and we have heard nothing.

THE COURT: What is the answer?

MR. DREYER: Mr. Welch was in contact with our office yesterday and indicated that he was now trying to accomplish the Order of the Court regarding discovery. He pointed out that he was ill during that period when the case was being reassigned to another attorney, and nothing was done regarding discovery.

However, he has indicated that he, the Government, is now ready and that he is trying to accomplish discovery as rapidly as possible.

That is the only explanation that I have concerning that.

THE COURT: What status does it put the trial in?

MR. DREYER: One other matter that should be brought out is that Mr. Welch has received

communications from a Mr. Boreanaz, and Mr. Allio, who apparently -- and also a Mr. DeSisti, who have indicated to him that they want that case put over to the Auburn Term.

THE COURT: Do you want it put over?

MR. SCACCIA: I am not moving the case to be put over until one matter is settled, Judge, and that is something that Judge MacMahon suggested that we take up with the local judge, since he was up from New York City, and that is that none of this delay in time can be attributed to the Defense.

Moreover, the Government has made a statement, and I omitted it in my earlier remarks: Almost immediately after arraignment, and before complying with Judge Port's order with respect to discovery and the like, they filed a statement with regard to readiness. I, for one, cannot understand how the Government can make a statement on the record, or off the record, that they are ready for trial in this case when they have failed to comply with the Court's Order, and I respectfully submit that all of the time, from at least the time that Judge Port set a date, I think it was a ten day date in which an Order was

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-4-75.

9

to be filed with his Honor, and copies to the Counsel, at least that from that date none of the delay in time be attributable to the Defense.

THE COURT: What is your computation? You are building up to have this dismissed?

MR. SCACCIA: I certainly am. I have made no secret on it previously.

THE COURT: You should be careful. Judge Port knows all about this and he knows more than I will ever know about it. I think it should be brought on before Judge Port, and he has a motion day next week, and put all of these cases on for him to decide whether they should be tried promptly, and what disposition he wants made, because it is up to him to find out this time computation.

Mr. Welch will be able to go in, in Syracuse. He is there and working.

So, March 10th, on the Judge's motion calendar, put these cases on to hear Mr. Scaccia tell what he just told me.

MR. SCACCIA: I think that that is very equitable.

Is there some way that we can have coordination? The United States Attorney claims that

it is the Clerk's Office that moves these cases for trial, and not them, and I know that the Clerk's Office is probably under some standing rule, and I think that there is some problem of communications. Why should I have to come here and drop a trial, that I have in Utica, and go back to Syracuse and pick up a file and come here because I happen to be the lawyer closest of all of the Defense lawyers, and I got elected.

THE COURT: What do you want to do?

MR. SCACCIA: I am suggesting the aide to the Court Clerk to direct the United States Attorney to be very careful about its file.

THE COURT: I will leave that to Judge Port, and let him direct everybody on what to do in the case. I don't know what to do about it. I will let Judge Port decide on that.

MR. SCACCIA: Thank you.

THE COURT: This should be brought on, and Judge Port should be informed about this situation, and the statement about the lack of coordination, and all of the other things he said here. The record here should be transcribed and given to Judge Port.

MR. SCACCIA: I didn't realize, and I

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-4-75.

11

thought that we were talking about both cases in which we have common Defendants, and which I represent Mr. Masciarelli in the second one. The same remarks I just made apply equally, and more so, because to this date, Judge, the Defendant in indictment 74-CR-144 hasn't even been arraigned, insofar as I know, and I have checked Ohio, and I have stopped at the Clerk's Office last Thursday, the Federal Clerk's Office in Utica, and there is no record at all of an arraignment or any Rule 20 Procedure involved.

So, as far as I know, a principal Defendant in that case has not been arraigned, although he has been indicted.

THE COURT: As to Mr. Welch's case, as far as I am concerned, Mr. Welch is responsible, and I know he has been sick, and those things have to be given consideration, and Mr. Scaccia, you can take the matter up before Judge Port.

I am directing that these minutes be transcribed, to enlighten Judge Port about what is coming before him, particularly your charge about the lack of coordination and so forth, and to the Attorney's Office and the Clerk's Office.

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-4-75.

This is held, subject to Judge Port's
ruling.

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75. 2

P R O C E E D I N G S

THE CLERK: United States of America versus Raymond D. Masciarelli and Lawrence Schultz, 74-CR-144 and United States of America versus Frank S. Cannone, et al., 74-CR-142.

MR. SCACCIA: May it please the Court, the matter here involves moving trial by the Government of both the cases just called by the clerk. This Court directed the Government to prepare and submit an order within a ten-day period and send copies of the proposed order to Counsel, and I respectfully submit there have been violations with respect to certain extensive materials that were in the possession of the Government.

THE COURT: What's the problem?

MR. SCACCIA: The problem is that the Government has been moving this case for trial at a time when it is not ready for trial, and moreover, motions were made at Utica before Judge McMahon bringing this entire matter to a head, by both Mr. Allio and myself, and at that time, Judge McMahon marked the case off. We had moved that the case be removed from the ready calendar, since the case was not ready to proceed,

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

not by virtue of any delay attributable to the Defendants. Judge McMahon, in response to Mr. Lowe who represented the Government, said that the matter as to whether time would be charged would be left to the trial judge, and within a few days after that ruling, the Government moved the case again, this time at the Albany session, and we still haven't received any discovery material of any kind.

THE COURT: So your problem is you haven't received the material on discovery.

MR. SCACCIA: That's correct.

MR. WELCH: If your Honor please, I would like to note on the record that this case was dated November 18, and the six-months rule expired without any motions. Not until March 19th -- The case is basically three and a half months behind. On January 30th your Honor ordered certain disclosures to be made. At that time, your Honor, after asking me, set ten days to accomplish that because of the pending Utica trial calendar. It was at that time when I came down with what subsequently was diagnosed as infectious hepatitis which left me out of work for five weeks. Regarding the matter of an answer, the matter was adjourned because

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

of the inability of the Government to file on time
for the Defense to prepare for the trial. The
Court brought the matter back up on the Albany
calendar, your Honor, and because of the confusion
in my office, the discovery has never been
accomplished and the Defense could not be ready
to go to trial at the Albany calendar. I have
received word from three defense attorneys as to
what their motion is, your Honor.

THE COURT: Well, I have gotten
letters. It seems everybody representing the
defendants but Mr. Scaccia wants the matter
adjourned, is that right?

MR. WELCH: That's my interpretation.

THE COURT: So I read the
minutes here before Judge Foley, and there was an
error there. Either he changed his mind after
talking to Mr. Scaccia or else Mr. Scaccia
misunderstood when he represented to the Court
that all the defendants were urging trial at that
session.

MR. WELCH: I have nothing further,
your Honor.

THE COURT: Be that as it may,

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

Mr. Scaccia, every time you appear before me --

5

MR. SCACCIA (Interrupting):

Listen, Judge, I don't think that's fair, that that comes up every time I appear before you, and we have --

THE COURT: You mean to speak respectfully.

MR. SCACCIA: I am, your Honor.

THE COURT: This "Listen, Judge" doesn't come in that category, so you learn that.

MR. SCACCIA: I certainly didn't intend disrespect there, your Honor.

THE COURT: I won't tolerate that. I want that understood. All right, I have heard the argument. When can this material be prepared?

MR. WELCH: I anticipate no more delay, your Honor, and the next two weeks --

THE COURT: Did I issue an order here, or did the Government agree to --

MR. SCACCIA (Interrupting): Both, your Honor.

THE COURT: Were there any delays?

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

MR. SCACCIA: Yes, there were, 6
your Honor. That's the point I was trying to
make. The Government was supposed to prepare
an order. They had the list of orders.

THE COURT: Has anybody got a
transcript of that?

MR. SCACCIA: I have notes, and
there are minutes.

THE COURT: What was the date of
that?

MR. WELCH: January 13.

THE COURT: All right. I will
prepare an order that will take care of that. I
will give you five days to submit the material that
is required. I appreciate that you were
seriously ill, and I think Counsel does. Everyone
does. The case is to be removed from the Albany
calendar. The case is to be Number One on the
May Criminal Calendar call.

MR. SCACCIA: I brought letters
Counsel have been sent, plus their telephone
calls. They have the impression that the case
is not going to be moved for the Auburn term.
Now, I was not part of that, but I feel that I
ought to point it out to the Court.

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

THE COURT: You mean the other
defendants? 7

MR. SCACCIA: Yes. In their
impression --

THE COURT: Well, I will just
defer to Mr. Welch. He was a party to this.

MR. WELCH: Your Honor has the
letters to the Court with their motions, and their
motions appear to be that they are not ready and
do not want to be ready until the Government has
supplied that material. I anticipate having that
material long before the Auburn Term, your Honor.

MR. SCACCIA: Now, Judge, there
is another matter that is still pending and that
was heard on motions made at Utica on January 31,
and that is as to whether or not the time is
going to be chargeable to the Defense.

THE COURT: Well, that I can
determine when the matter arises. It may become
academic.

MR. SCACCIA: Right. The reason
I brought it up is because at the Albany term
the matter was handled systematically, but there
was a question as to whether or not time was
chargeable and that is what --

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

THE COURT: Well, it was not that soon and the gentlemen still consented an order be served, and the Court was unaware of it. 8

MR. SCACCIA: The Defense was moving the case for trial. Whether it was the U.S. Attorneys's office -- that was one of the things that Judge Foley directed and that was one of the reasons he was ordering the minutes transcribed and sent here, your Honor, to bring this matter of co-ordination to your Honor's attention.

THE COURT: Now, what this lawyer Remo Allio does is make an observation that, in his opinion, which he doesn't dignify as carrying much weight -- The way he puts it is his opinion, together with 35 cents will get him a ride on the subway -- but in his opinion, the case will not be going to trial until September of this year because there are many and various things to do and many attorneys involved. Now, I think that it can be fairly certain that as long as Mr. Scaccia wants a trial that it will be tried before September. It will be tried at the May Term, as long as the Defense Attorney wants a trial.

MR. SCACCIA: I am simply

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

asking, Judge, we not be put in a position --

THE COURT: Well, it will be tried in May. As long as somebody wants to try it, it's going to be tried.

MR. SCACCIA: Do I take it your Honor is reserving to trial or the later term?

THE COURT: Well, there is no issue before me. There is nothing to decide right now. If we get a question of the six-months rule becoming involved, why, that will be it. Right now it's no problem.

MR. SCACCIA: Judge, it only comes up because --

THE COURT: Well, whatever it comes up for, it's no problem, and the six-months rule, of course, is not an arbitrary rule of trial; it's just a rule that the Government need be ready for trial. It doesn't necessitate a trial within six months. The rule doesn't say that.

MR. SCACCIA: No. I understand that, your Honor, but what causes problems is there was a ruling by the Court in each and every case as to whether the time would be chargeable to the Defense or chargeable to the Government.

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

THE COURT: And this was left
open.

MR. SCACCIA: Judge Foley
referred that question here.

MR. WELCH: It's all on the
record.

THE COURT: Well, I read that
record, and as with most of those records where
there is conversation back and forth, it's
largely unfinished sentences. It's difficult
to understand.

MR. SCACCIA: I might say there
were third and fourth parties also speaking,
your Honor.

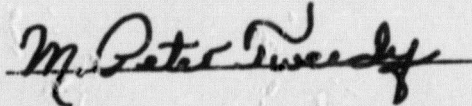
THE COURT: Therefore, there were
all kinds of interruptions, but that question
isn't ripe yet, and, of course, I am certain that
any judge considering time factors is going to
take into consideration the fact that Mr. Welch
was seriously ill.

(Whereupon, the proceedings in
the above-entitled action were concluded.)

TRANSCRIPT Re: Motion for Speedy Trial, dated 3-10-75.

11

I, M. Peter Tweedy, Acting Official
Reporter for the United States District Court,
Northern District of New York, do hereby certify
that the foregoing is a true and accurate transcript
of the stenographic notes of the proceedings held
at Syracuse, New York on the 10th day of March,
1975.



Albany, New York
Dated: May 23, 1975

REQUEST OF COUNSEL FOR APPELLANTS, dated 3-16-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-v-

JON W. ENGLISH, RAYMOND D.
MASCIARELLI, JAMES W. McGRATH,
et al

REQUEST
Criminal No.
74-CR-142

3/16/77

PLEASE TAKE NOTICE that the defendants heroin request that the Clerk of the Court furnish a detailed computation of the periods of time chargeable respectively to the defendants individually and to the Government and requests that the list of computation of time be made separately as to each defendant. The defendants further request that the Clerk furnish to each of them a copy of the Clerk's docket as respect, each of the defendants.

Yours, etc.

TO: U. S. District
Court Clerk
Federal Building
Syracuse, New York 13202

CHARLES W. AVERY
Attorney for Defendant
Jon English
188 Genesee St.
P.O. Box 694
Auburn, New York 13021

JAMES SHANAHAN
Attorney for Defendant
James W. McGrath

DANTE SCACCIA
Attorney for Defendant
Raymond D. Masciarelli

LETTER from Clerk of U.S. District Court, James K. Evans to Charles W. Avery, Esq., dated 3-30-77.

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
NORTHERN DISTRICT OF NEW YORK
UTICA, N. Y. 13503

JOSEPH R. SCULLY
CLERK

March 30, 1977

Charles W. Avery, Esq.
Attorney and Counsellor at Law
Carr Building
P.O. Box 684
188 Genesee Street
Auburn, New York 13021

Re: People v. English, et al.
74-CR-142

Dear Mr. Avery:

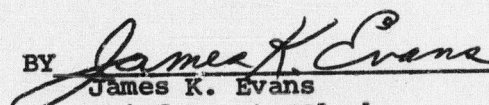
Receipt is hereby acknowledged of yours of March 16, 1977 requesting a detailed computation of time chargeable to the Government and to the defendants with respect to the Speedy Trial requirements.

Please be advised that I have been instructed by the Clerk of the Court, Mr. Scully, to inform you that this office cannot make such computations and that time is a judicial function only.

Further be advised that we could be of some assistance by sending a copy of the docket entries in the above matter, however since this office has previously forwarded the docket entries to you and has to date not received payment for same in the amount of \$3.00, we cannot accommodate you with any additional copies unless and until payment is received on the previous charge, together with prepayment for any future copies requested.

Very truly yours,

J. R. SCULLY, CLERK

BY 
James K. Evans
Chief Deputy Clerk

JKE:ed

COMPUTATION OF TIME CALCULATED BY U.S. DISTRICT
COURT CLERK to 5-3-77.

RAYMOND D. MASCIARELLI

JON N. ENGLISH

74-CR-142

July 1, 1976 180 days

Excludable delays:

	<u>DAYS</u>	
7/14/76 Pretrial Motion	1	
9/20/76 to 11/9/76 Continuance Interest of Justice	51	
11/15/76 Pretrial Motion	1	
11/17/76 to 11/29/76 Continuance Interest of Justice	13 <u>66</u>	Excludable Days
11/29/76 Trial		
From 7/1/76 to 11/29/76	151 days - 66	
	85 days time ran	

 November 30, 1976 - Mistrial - 60 days

11/30/76 to Continuance Interest of 2/14/77 Justice	77 days	
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Jan. 3,4,7, 21 Pre trial motions no
excludable days - duplication

3/1/77 to May 3, 1977 Continuance Interest of Justice	62 days	
		139 days excludable

From 11/30/76 to 5/3/77	154 days -139	
	15 days time ran	
		<i>45 days left</i>

145A

COMPUTATION OF TIME CALCULATED BY U.S. DISTRICT
COURT CLERK to 5-3-77.

JAMES W. McGRATH

74-CR-142

July 1, 1976 180 days

Excludable Delays:

	Days
7/14/76 Pretrial Motion	1
9/20/76 to 11/9/76 Continuance Interest of Justice	51
11/15/76 Pretrial Motion	1
11/16/76 to 12/20/76 Continuance Interest of Justice	34
1/10/77 Pretrial Motion	1
Jan. 3,4,7,21 Pretrial Motions	4
3/1/77 to 5/3/77 Continuance Interest of Justice	<u>62</u>
	154 Excludable Days

From 7/1/76 to 5/3/77

306 Days
- 154

152 Days time ran

28 days left

TRANSCRIPT OF PROCEEDING BEFORE HON. JAMES T. FOLEY,
Chief United States District Judge of 3-1-77.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

74-CR-142

RAYMOND MASCIARELLI and
JON N. ENGLISH,

Defendants.

TRANSCRIPT OF PROCEEDINGS in the
above-entitled matter held before Hon. James T. Foley,
Chief United States District Judge in the Northern District
of New York, on the 1st day of March 1977 at the Federal
Building, Albany, New York.

APPEARANCES:

HON. PAUL V. FRENCH,
United States Attorney for the
Northern District of New York,
BY: JOHN McCANN,
Assistant United States Attorney.

THE CLERK: United States of America
versus Raymond Masciarelli and Jon English, 74-CR-142.

MR. McCANN: Your Honor, I have spoken
to Mr. Chalenski. He advised me the case is ready
subject to a Suppression Hearing which is presently
pending before Judge Munson, and Judge Munson has
indicated that he will try the case at the conclusion
of the hearing. Also the following two cases, number
three and four are ready immediately following the
above, and Mr. Chalenski advises me that it is two
weeks to one month before the trial of those four
cases.

THE COURT: Well, I had letters on
the Masciarelli and English case, and I think they
are in the middle of a Suppression Hearing before
Judge Munson. Is that right?

MR. McCANN: That's correct, Your
Honor. Part of the Suppression Hearing has been held
and it has been adjourned or recessed temporarily.
I am not sure when he is going to continue the
Suppression Hearing.

THE COURT: What about the other two
cases, McGrath and Abbadessa, is that the other two
you are talking about?

MR. McCANN: Yes, Your Honor, they are

all part of a series of cases known as the Cannone cases. It is my understanding the major defendants have either been tried or pled in the cases, and the four cases that are listed on the calendar are the only remaining ones, and there is a Suppression Hearing presently being conducted in front of Judge Munson on the Masciarelli and English. It is my understanding that as soon as those are disposed of, if they are to be tried, McGrath and Abbadessa will follow immediately.

THE COURT: And Judge Munson has so scheduled them, as far as you know?

MR. McCANN: As far as I know, Your Honor.

THE COURT: All right. For those reasons then, it will be marked over, and pursuant to 18, USC 3161(b)(8)(a), the Court, as I refresh myself this morning, has to make an oral statement that the interest of justice will be best served and the speedy trial interest would be best served by putting this case over the term by reason of the Suppression Hearing, and the trial will be scheduled soon in Syracuse.

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

THE PERSONS OF: STANLEY A. RAPPUCCI,
THOMAS A. GAETANI,
JOSEPH N. MARUCA,
JON N. ENGLISH,
EUGENE D. SCHIAPPA,
ROGER L. EVANEK,
JOYCE EVANEK,
CARMEN C. DE LANZO,
RAYMOND D. MASCIARELLI,
JAMES W. McGRATH,

THE PREMISES LOCATED: IN ROOM #4, VESTAL MOTEL, VESTAL PARKWAY
EAST, VESTAL, NEW YORK,

IN A ONE AND ONE-HALF STORY, SINGLE
FAMILY RESIDENCE HAVING WHITE CEDAR SHAKE
SIDING WITH BROWN TRIM AND ATTACHED
SINGLE CAR GARAGE LOCATED AT 820
MORELANDO DRIVE, ENDICOTT, NEW YORK,

ON THE SECOND FLOOR OF A TWO STORY, TWO-
FAMILY FRAME DWELLING, PAINTED BLUE AND
WHITE AND SITUATED AT 52 ROTARY AVENUE,
BINGHAMTON, NEW YORK, WHICH SECOND FLOOR
PREMISES HAS AN ENTRANCE ON THE SOUTH
SIDE OF THE BUILDING,

ON THE FIRST FLOOR OF A FOUR STORY RED
BRICK BUILDING, THE FIRST FLOOR BEING
PAINTED WHITE, AND SITUATED AT 229
CHENANGO STREET, BINGHAMTON, NEW YORK,

IN THE BASEMENT APARTMENT OF A TWO-STORY
RESIDENCE HAVING TAN COLORED ASBESTOS
BRICK SIDING, at 24 LISLE STREET,
BINGHAMTON, NEW YORK, WHICH BASEMENT
PREMISES HAS AN ENTRANCE ON THE EAST
SIDE OF THE BUILDING.

AFFIDAVIT

IN SUPPORT OF SEARCH WARRANTS

ROBERT R. HAZELWOOD, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation.
I make this affidavit in support of an application for warrants to search
certain persons and premises in the cities of Binghamton, Endicott, and
Vestal, New York, where probable cause exists to believe paraphernalia
used in an illegal gambling business as well as evidence and fruits of

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

this crime shall be found.

My duties with the Federal Bureau of Investigation are to conduct investigation into organized crime activities in and around the cities of Binghamton, Endicott, and Vestal, New York. I have been an F.B.I. Agent for two and one-half years and during the course of my official duties, I have conducted numerous investigations of illegal gambling business. I have also studied other gambling investigations and have talked to the Special Agents who conducted these investigations. I have spoken with confidential informants about the operations of illegal gambling business. From all of the above, I have become familiar with the operation of illegal sports betting operations.

2. Based on the facts set forth in the succeeding paragraphs, there is probable cause to believe that:

a. STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JOYCE EVANEK, ROGER EVANEK, JON N. ENGLISH, JOSEPH N. MARUCA, EUGENE D. SCHIAPPA, RAYMOND D. MASCIARELLI, JAMES W. McGRATH, and CARMEN C. DE LANZO, are conducting, financing, supervising, directing or owning all or part of an illegal gambling business in violation of the laws of the State of New York, Penal Law Section 225, and have and are conspiring to do the same in violation of Title 18, United States Code, Sections 1955 and 371.

b. On the person of STANLEY A. RAPPUCCI, THOMAS A. GAETANI, JOYCE EVANEK, ROGER EVANEK, JON N. ENGLISH, JOSEPH N. MARUCA, EUGENE D. SCHIAPPA, RAYMOND D. MASCIARELLI, CARMEN C. DeLANZO, and JAMES W. McGRATH, there is being kept and concealed gambling paraphernalia, records of bettors, and amounts wagered on gambling schemes, tally sheets, records reflecting who took the bets, currency, line sheets, scratch sheets, lists of code names and numbers, and betting slips used in the conduct of the illegal gambling business as well as other evidence of and fruits of an illegal gambling business.

c. On the premises located in Room #4, Vestal Motel, Vestal Parkway East, Vestal, New York; the premises located at 820 Morelando Drive, Endicott, New York, a single family dwelling house with white cedar shake siding and brown trim, in a residential neighborhood; the premises located on the second floor of a two story dwelling at 52 Rotary Avenue, Binghamton, New York,

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

a two-story frame dwelling, painted blue and white; the premises at 229 Chenango Street, Binghamton, New York, a four-story red brick building with ground floor painted white; and the premises located in the basement apartment of a two-story residence having tan colored asbestos brick siding, at 24 Lisle Street, Binghamton, N. Y.; there is being kept and concealed gambling paraphernalia, records of bettors and amounts wagered on gambling schemes, tally sheets, records reflecting who took bets, currency, line sheets, scratch sheets, lists of code names and numbers, betting slips and office machines, such as adding machines, and tape recorders, and recording tapes, used in the conduct of the illegal gambling business, as well as other evidence of and fruits of the illegal gambling business.

WIRE
INTERCEPTION

3. On March 6, 1974, the Honorable Edmund Port, United States District Judge, Northern District of New York, signed an order authorizing the interception, pursuant to Title 18, United States Code, Section 2518, of wire communications of a certain telephone. The order was based on probable cause that an illegal gambling business was being conducted in violation of Title 18, United States Code, Sections 1955 and 371. Pursuant to that order, wire communications of telephone number (607) 729-1401 were intercepted. This interception began on March 7, 1974, and terminated on March 21, 1974.

4. Based on the above interception, the Honorable Edmund Port signed an order on April 11, 1974, authorizing the interception, pursuant to Title 18, United States Code, Section 2518, of wire communications on certain telephones. The order was based on probable cause that an illegal gambling business was being conducted in violation of Title 18, United States Code, Sections 1955 and 371. Pursuant to that order, wire communications of telephone numbers (607) 729-1401 and (607) 724-5301 were intercepted. Interception began April 11, 1974 and April 12, 1974, respectively, and terminated on April 25, 1974.

5. Based on the above interceptions, the Honorable Edmund Port signed an order on May 3, 1974, authorizing the interception, pursuant to Title 18, United States Code, Section 2518, of wire communications

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

on certain telephones . The order was based on probable cause that an illegal gambling business was being conducted in violation of Title 18, United States Code, Sections 1955 and 371. Pursuant to that order, wire communications of telephone numbers (607) 754-6933 and (607) 754-0861 were intercepted. Interception began May 4, 1974 and May 8, 1974, respectively, and terminated May 13, 1974.

RESULTS OF
INTERCEPTION

6. The conversations intercepted pursuant to the above authorizations were recorded and I have listened to every tape recording. The results of the above described wire interceptions revealed that STANLEY A. RAPPUCCI, a/k/a "STAN" and "STOSH"(ph), and THOMAS A. GAETANI, a/k/a "SLAB", operate an illegal gambling business which includes both horse and sports betting, utilizing (607) 729-1401 and (607) 754-6933. The interceptions further revealed that RAYMOND D. MASCIARELLI, a/k/a "RAMEY" (ph), "R.F.", "RAY MILLS", and JAMES W. McGRATH are bookmakers utilizing (607) 724-5301 and that they exchange gambling information with RAPPUCCI and GAETANI and layoff bets to RAPPUCCI and GAETANI. The interceptions further revealed that ROGER and JOYCE EVANEK, a/k/a "BR" are bookmakers utilizing (607) 754-0861 and that they exchange gambling information with RAPPUCCI and GAETANI and layoff bets to RAPPUCCI and GAETANI. The interceptions further revealed that JON ENGLISH, JOSEPH MARUCA and EUGENE SCHIAPPA are bookmakers utilizing (607) 748-6084 and that they exchange gambling information with and layoff bets to GAETANI and RAPPUCCI. The interceptions further revealed that CARMEN C. DeLANZO is exchanging point information and discussing financial status, as pertains to illegal gambling business, with RAYMOND D. MASCIARELLI and JAMES W. McGRATH and that DeLANZO receives point information from and lays off betting action to THOMAS A. GAETANI. CARMEN C. DeLANZO utilizes telephone number (607) 724-1622 in these transactions. The above will be set forth in greater detail in the succeeding paragraphs.

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

STANLEY A. RAPPUCCI
THOMAS A. GAETANI
52 Rotary Avenue
BINGHAMTON, NEW YORK

7. During the period of both interceptions on (607) 729-1401 and as late as April 25, 1974, RAPPUCCI and GAETANI were intercepted on numerous occasions, taking horse, basketball, and baseball wagers, accepting layoff of bets, exchanging point information and race results, and conferring with various persons regarding illegal gambling business. GAETANI and RAPPUCCI were intercepted on those occasions utilizing (607) 729-1401, located at 52 Rotary Avenue, Binghamton, New York.

8. During the period of interception on (607) 754-6933 and as late as May 13, 1974, RAPPUCCI and GAETANI were intercepted on several occasions discussing the wager and layoff balances of bookmakers and bettors doing business with them in their illegal gambling business. RAPPUCCI was intercepted on those occasions utilizing (607) 754-6933 located at 708 Front Street, Vestal, New York, while speaking to GAETANI who was utilizing (607) 729-1401. During these conversations, GAETANI provided the above information to RAPPUCCI.

9. During the second interception of (607) 729-1401 and the period of interception of 607 (754-0861) and as late as May 13, 1974, ROGER and JOYCE EVANEK were intercepted on numerous occasions receiving the point spread on baseball games from, and laying wagers off to THOMAS A. GAETANI at (607) 729-1401. ROGER and JOYCE EVANEK were intercepted during those conversations utilizing (607) 754-0861 located 820 Morelando Drive, Endicott, New York.

JON N. ENGLISH
JOSEPH N. MARUCA
EUGENE D. SCHIAPPA
Room 4, Vestal Motel
Vestal Parkway East
VESTAL, NEW YORK

10. During the period of both interceptions of (607) 729-1401 and as late as April 22, 1974, a total of thirty-eight calls were placed to (607) 748-6084 subscribed to by JOHN SPIGA. During these calls point

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

information was exchanged between THOMAS A. GAETANI and at least three unknown males and layoffs or wagers were placed by the unknown males and GAETANI. Additionally, balances were discussed. Investigation by the affiant has revealed no postal, criminal, or credit records pertaining to JOHN SPIGA. Investigation by Special Clerk Ronald W. Palmer, F.B.I., at the New York Telephone Company revealed that telephone number (607) 748-6084 is located in Room 4, Vestal Motel. Surveillances of that location by Special Agents of the F.B.I. as late as May 13, 1974, have placed JON ENGLISH in room 4, Vestal Motel on at least four occasions; JOSEPH MARUCA on at least two occasions, and the vehicle registered to EUGENE SCHIAPPA has been observed at that location on at least ten occasions. The times at which these observations took place coincide with the above described interceptions of gambling communications.

RAYMOND D. MASCIARELLI
JAMES W. Mc GRATH
229 Chenango Street
BINGHAMTON, NEW YORK

11. During the period of both interceptions of (607) 729-1401 and as late as April 25, 1974, RAYMOND MASCIARELLI and JAMES McGRATE were intercepted on numerous occasions exchanging point information, discussing the balance of layoff and wagers, and giving layoff of wagers to THOMAS A. GAETANI. During these interceptions, McGRATH and MASCIARELLI conducted their transactions over telephone number (607) 724-5301, as determined by outgoing calls from (607) 729-1401. Investigation by Special Clerk Ronald W. Palmer at the New York Telephone Company revealed that the subscriber to this number (607) 724-5301 is RAYMOND FORDNIA and that the telephone is located on the first floor of 229 Chenango Street, Binghamton, New York. Investigation by your affiant has revealed no postal, credit, or criminal records pertaining to a RAYMOND FORDNIA. On several occasions during the period of these interceptions RAYMOND MASCIARELLI responded to telephone calls to "R.F."

*AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.*

12. During the period of interception of communications of (607) 724-5301 and as late as April 25, 1974, RAYMOND MASCIARELLI and JAMES McGRATH were intercepted on numerous occasions providing point information to various persons, accepting wagers on horse races, basketball, and baseball games, discussing balances of bets or layoffs with numerous persons, including THOMAS A. GAETANI. On April 15, 1974, JAMES McGRATH arranged to pick up money from a bettor at 23 Stuyvesant Street, Binghamton, New York, at a specific time. Surveillance by Special Agents of the Federal Bureau of Investigation at that location revealed a male parked at that location in a vehicle registered to JAMES W. McGRATH, 20 Munsell Street, Binghamton, New York. During these interceptions, MASCIARELLI and McGRATH were utilizing (607) 724-5301 located at 229 Chenango Street, Binghamton, New York.

ROGER EVANEK
JOYCE EVANEK
820 Morelando Drive
ENDICOTT, NEW YORK

13. During the period of the second interception of (607) 729-1401 and as late as April 21, 1974, THOMAS A. GAETANI placed numerous outgoing calls to telephone number (607) 754-0861, provided point information on basketball and baseball events to, and received layoff of wagers from ROGER and JOYCE EVANEK. Investigation by Special Clerk Ronald W. Palmer, F.B.I., at the New York Telephone Company revealed that (607) 754-0861 is subscribed to by ROGER EVANEK.

14. During the period of interception of (607) 754-0861 and as late as May 13, 1974, ROGER and JOYCE EVANEK were intercepted receiving point information from THOMAS A. GAETANI, providing that information to numerous persons, accepting wagers, and layoff of wagers from various persons, and laying off to THOMAS A. GAETANI. ROGER and JOYCE EVANEK were utilizing telephone number (607) 754-0861 located at 820 Morelando Drive, Endicott, New York, during interceptions.

CARMEN C. DeLANZO
24 Lisle St.
BINGHAMTON, NEW YORK

15. During the period of the second interception of (607) 729-1401 and as late as April 24, 1974, CARMEN C. DeLANZO was intercepted while

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.**

discussing with THOMAS A. GAETANI bookmaking, laying off of sports, wagers, and point information. During the period of the interception of (607) 724-5301 and as late as April 25, 1974, DeLANZO was intercepted, while discussing with RAYMOND D. MASCIARELLI and JAMES W. McGRATH, point information and the financial status of an illegal gambling operation. During the above interceptions, several outgoing calls were made from the monitored phones to (607) 724-1622, over which DeLANZO spoke.

16. Investigation at the New York Telephone Company by Special Clerk Ronald W. Palmer, determined that the subscriber to (607) 724-1622 is EDWARD GLOVER and that the phone is located in the basement apartment at 24 Lisle Street, Binghamton, New York.

17. During the period of the two interceptions of (607) 729-1401, more than \$2,000 in wagers was received on each day except two days. During the period of interception of (607) 724-5301, more than \$2,000 in wagers was received on each day except three days. During the period of interception of (607) 754-0861, more than \$2,000 in wagers was received on each day except one day.

18. Based on my experience in investigating gambling matters, I know that in horse and sports betting operations, the persons who accept bets normally keep records of their illegal gambling operation in order to minimize disagreements at a later date. These same persons keep, on their persons, gambling paraphernalia to include pads, betting slips, lists of bettors, line information, lists of amounts wagered, copies of betting records and currency obtained from the gambling operation. I also know that this same material is kept at the locations from which the gambling operation is carried on. I also know, from interception of communications of (607) 729-1401, that STANLEY A. RAPPUCCI and THOMAS A. GAETANI, record their acceptance of wagers and layoffs of wagers, on a tape recorder at 52 Rotary Avenue, Binghamton, New York, because both RAPPUCCI and GAETANI, in intercepted conversations, refer to gambling information, in one instance a disputed wager, which can be verified by their playing back the tape recording.

I have heard a conversation wherein JOYCE EVANEK indicated to GAETANI "I can't find my book, just a second, OK." She stated this immediately

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANTS OF ROBERT
R. HAZELWOOD, Special Agent, F.B.I., dated 6-17-74.**

before receiving line information from GAETANI. These are specific examples of the type of conversations I have heard during these interceptions which indicate these people maintain these records and evidence on the premises in which the telephones are located or on their persons.

19. Investigation to determine the precise location within the named premises of phones utilized in paragraphs 7, 10, 11, and 14 above, is not reasonable without jeopardizing the security of the investigation. Also it is reasonable to believe that the gambling records which are the subject of the search warrant could be located either in the room in which the telephone is located or in any other room of the described premises.

20. I have maintained contact with the two reliable confidential sources whose information resulted in the issuance of the above mentioned wire interception authorizations. The information they provided me was verified by these wire interceptions; that is, (with the exception of two people) the people conducting this gambling business as indicated by these sources were, in fact, overheard conducting this gambling business on the telephones indicated by the sources using codes indicated by the sources. These two sources, who were proved reliable by these wire interceptions, have indicated to me that this gambling business has been conducted since June 1973, and as of June 11, 1974 is still being conducted. Therefore, I submit there is probable cause to believe that this illegal gambling business is still in operation.

21. From all of the above, it appears that probable cause exists as set out in paragraph 2 above.

WHEREFORE, it is respectfully requested that warrants to search for and seize the materials set forth above be issued.

RS
ROBERT R. HAZELWOOD, Special Agent
Federal Bureau of Investigation

Subscribed and sworn to
before me this 17th
day of June, 1974.

Edmund Port
UNITED STATES DISTRICT JUDGE

TRANSCRIPT OF DECISION ON SEARCH WARRANT.

fact is that this case was on for November 9, 1976 and a special jury was ordered in here for that purpose, with the knowledge of the Government and defense counsel and as far as I know, no argument to this effect came up and on the 17th, or whenever it was that this Court granted a continuance to today, that the Court said that any motions that defense counsel had to make specifically with regard to what they were talking about on that day could be made by the 22nd or 23rd of November.

This was not one of the motions that was being argued at that time, so that I feel that the motion is not timely and that defense counsel had ample opportunity to the many months before even this Court was appointed, to make that kind of a motion but did not make it. So, I am going to deny that motion.

Now, with regard to the motion for suppression of the evidence educed by the warrant: I find myself in some disagreement with the Broome County Court Judge. It may not be that he and I are talking about the same thing. I suspect that he was talking about a motion to suppress the use as evidence of a quantity of marijuana, and that is a little different situation than we have here.

Also, he totally ignored, I think, the statement at the end of Mr. Hazelwood's, the F.B.I. agent's

TRANSCRIPT OF DECISION ON SEARCH WARRANT.

affidavit when he stated in Paragraph 20 of that affidavit that he had some evidence that the business had been conducted as late as June 11th, 1974. The Judge in Broome County continued to talk about 55 days which he related back to April of 1974, and therefore I do not agree with his decision, at least in the indictment that we are concerned with here.

So I would deny that. Of course, all of the defense counsel may have an objection to my rulings here.

I feel that this case was adjourned from November 9th, it was set down for trial on that date and I do not know the date before that that defense counsel was advised of those facts, but I would suspect it was before I was confirmed. I suspect that they knew that they were to be ready for trial on that date and, as I recall, they were not ready at that time because one of the counsel was involved in another trial. The case was then adjourned, and as I recall, the case was marked ready by all of the Defendants at that time, and we had several conferences and some of the Defendants pled guilty and this case was then held until today.

I think that under those circumstances the case should proceed to trial at this time.

MR. AVERY: There is one other motion

SUPPRESSION MOTION, dated 11-29-76.

would pertain to bookmaking, conducting any financing, managing, supervising, directing and owning a part of an illegal gambling business. I am wondering if the United States Attorney would elect at this time the method of proof that he wishes or is planning to proceed in relation to show that I can direct my thought process toward this particular, or the particular method of proof he is planning to use?

THE COURT: All right, Mr. Chalenski.

MR. CHALENSKI: I am inclined to elect, your Honor, we intend to prove all words at this time that the defendant McGrath did conduct and finance, manage, supervise, direct and did own.

THE COURT: All right, that is an election.

MR. SHANAHAN: That is good enough.

(Recess.)

TRANSCRIPT OF DENIAL OF MOTION OF WIRETAP EVIDENCE
on 4-27-77.

with regard to Raymond Masciarelli and John English on another sheet, and I would give them to you at this time if you so desire.

MR. AVERY: Thank you.

THE COURT: All right, I assume that you are going to need some time to review that. Can we proceed to the next order of business?

Mr. Avery, on December -- or under date of December 6, 1976, you served a notice of motion for a suppression hearing. The Government agreed to that hearing and the hearing has been held. The Court has not rendered an opinion as yet in that regard and at this time I am going to deny the motion for suppression and a written opinion will follow. Now, I wish to state at this time that while that motion was made by Mr. Avery, on behalf of the defendant English, it is my understanding that Mr. Scaccia and Mr. Shanahan joined in the motion and participated therein, is that correct, gentlemen?

MR. SHANAHAN: Yes, your Honor.

MR. SCACCIA: Yes, your Honor.

MR. AVERY: Yes, your Honor.

MR. SCACCIA: I was just going to say, your Honor, that the defendant Masciarelli specifically was recited in the motion papers.

TRANSCRIPT OF REPRESENTATION TO HON. HOWARD G.
MUNSON OF McGRATH - MASCIARELLI CONFLICT.

3

THE COURT: Gentlemen, the reason that I have asked you to congregate here is because Mr. Scaccia came in to see me on Friday, with regard to the decision of the Second Circuit in the United States against White, which was decided on November 3rd, 1976, and I don't know whether you are familiar with that case or not.

I understood, Mr. Scaccia, that you represent two of the Defendants in the case 76-CR-142?

MR. SCACCIA: That is correct, Judge.

THE COURT: Well, why don't you state for me and the rest of your -- or the rest of the gentlemen what your authorities are.

MR. SCACCIA: Well, first, the other day Mr. Avery and I, who represents a Co-Defendant, John English, together with my client Masciarelli and McGrath, with -- were all discussing pre-trial preparations in this case, and for the first time, McGrath indicated that he, McGrath, was not a bookmaker, and did not have a portion of the profits of any bookmaking operation, and did not realize any profits therefrom, and with that I felt, and I think that Mr. Avery also feels and we discussed it then and there, that there might arise a possible conflict in as far as I was concerned. For one, it was new information just then disclosed for the first

TRANSCRIPT OF REPRESENTATION TO HON. HOWARD G.
MUNSON OF McGRATH-MASCIARELLI CONFLICT.

4

time.

For another, and not having Carrigan in mind, because I did not know about it until Friday, it seemed that it might raise a possible conflict of interest in the event that McGrath wanted to testify in substance of that effect and what I have just disclosed to the Court.

Friday at the law library, since Thursday was a holiday, I came across the United States against Carrigan, which had just been received by the library today, and the case that you, Your Honor, made reference to earlier today and was decided November 3rd, and it seemed to me that that case, together with the information that McGrath had just disclosed to me the day before mandated that I bring the matter to the attention of the Court, and I brought it to the U.S. Attorney's attention, Mr. Chalinski first, and I asked for a joint conference with the Court to make that disclosure or that revelation and get a ruling from the Court at pre-trial, and determine the rule out, or rule in, with any possible conflict of interest, and have the Court rule with respect to that matter.

THE COURT: I understand, Mr. Scaccia, that you are the retained counsel of both of those Defendants?

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

10

Exhibit 14-C, one of two. I'd like to play the first portion of that and then skip to a later section of it and play that. It will be in two separate sections.

THE COURT: All right.

MR. SHANAHAN: I'd like to object to the selectivity by counsel.

MR. CHELANSKI: Defense counsel wants me to play the whole tape.

THE COURT: Is that what you want, Mr. Shanahan?

MR. SHANAHAN: I'd rather have you rule on the objection.

THE COURT: Well, the objection is, you are objecting to Mr. Chelanski's selectivity on a particular tape.

MR. SHANAHAN: Yes, that is right.

THE COURT: The only two other alternatives we have is not to play the tapes at all or to play the whole thing.

MR. SHANAHAN: I would regard the former.

THE COURT: Overruled.

(Attorney for the Government handing

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

11

out exhibits to the Jury and counsel and the
Court.)

MR. SHANAHAN: May we approach the bench,
Your Honor?

THE COURT: Do you want a reporter?

MR. SHANAHAN: No.

(Whereupon new transcripts were handed
out to the Court and Jury and counsel.)

THE COURT: All right, this is not
evidence that you are saying for the Jury's
benefit, but will you tell us what tape you
are playing, is this 14-C?

MR. CHELANSKI: That is correct, it is
tape one of two and has a tape from the
intercept telephone number, telephone subscribed
to by Thomas Gaetani, telephone number 729-1401,
subscribed to by Thomas Gaetani.

THE COURT: Is that one of the original
tapes?

MR. CHELANSKI: That is correct.

THE COURT: Not a composite?

MR. CHELANSKI: Recorded on March 9, 1974,

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

12

that is right.

THE COURT: All right, it starts out
with page 123.

(Whereupon, the Court, Jury and counsel
listened to tape and followed along on trans-
cripts of Exhibit 14-C commencing on page
123 and concluding at page 149.)

THE COURT: We will take our recess now.

(Whereupon, the Court recessed at
11:20 a.m.)

(Whereupon, following a twenty minute
recess, the Court, Jury and counsel returned
to the courtroom and resumed at 11:50 a.m.)

MR. CHELANSKI: Your Honor, I now move
to play a portion of 14-C, two of two. It is
a conclusion of that same day and the portion
begins on transcript page 240.

MR. SHANAHAN: Same objection.

THE COURT: Overruled, you may play it,
Mr. Chelanski. Page 240.

(Whereupon, the Court, Jury and counsel
listened to tapes and followed along on
transcript. Exhibit 14-C commencing with

*TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.*

13

page 240 and concluding on page 250.)

MR. CHELANSKI: The Government now moves to play 16-IIII, one of two and two of two. Government now moves to play Exhibit 14-quadruple --

THE COURT: Ladies and gentlemen of the Jury, we have a small problem with the Grand Jury that is sitting here today, that has to be resolved immediately, and they tell me it will take 45 minutes to an hour, so I'm going to adjourn this case at this time until two o'clock, and I will hear what the problem is with the Grand Jury, and we will recommence at two o'clock. This case stands in recess until two o'clock. Court stands in recess to Chambers.

(Whereupon the morning session ended at twelve o'clock, p.m. to recommence at two o'clock, p.m.)

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST 14
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

AFTERNOON SESSION

(Whereupon, at 2:20 p.m. on May 18,
1977, the Jury returned to the courtroom.)

MR. CHELANSKI: Your Honor, the
Government moves to play tape 16-IIII, one
of two and two of two. We have transcripts
prepared, and we will --

THE COURT: What is that?

MR. CHELANSKI: That is a composite
tape, Your Honor, made from the original or
made from copies of original tapes in evidence.
It is a composite tape of all different days.

THE COURT: Does the transcript contain
all of the statements that are made on the
tapes?

MR. CHELANSKI: Yes, Your Honor, in
this case it does.

THE COURT: All right. Would you please
pass them out, there? Mr. Shanahan?

MR. SHANAHAN: I'd like to object, again.

THE COURT: All right, overruled.

MR. CHELANSKI: This is Government's

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED. 15

Exhibit 16-III, starting with page 14.

(Whereupon, Government's attorney played the tapes and counsel, Court and Jury listened to the tapes and followed along on transcripts, Government's Exhibit 16-III commencing on page 14 and going to page 17, and then commencing with page 20 and going to page 22, and commencing with page 35 and going to page 38, commencing with page 49 to page 51, then page 90 to page 91, and going to page 175 to page 177 and then page 225 to page 227, then page 272, page 277 and page 307 to page 308, going to page 350 to page 352 and concluding with page 373. Whereupon, at page 373 at 2:50 p.m., they stopped playing the tapes.)

THE COURT: Do you want to listen more or do you want a break? How much more on that tape?

MR. HAZELWOOD: About a third of the way through.

THE COURT: Why not try another 15

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

16

minutes and then we'll take a break.

(Whereupon, tapes and transcripts were continued on page 380, to page 381 to page 385 to page 386, page 449 to 450, then page 457 and pages 468 to 470, to page 509 to 510. Whereupon, at page 510 of the transcript, the tapes were stopped.)

THE COURT: Ladies and gentlemen, we will take a short recess at this time.

(Whereupon, the Court recessed at 3:05 p.m.) W

(Court back in session after recess at 3:25 p.m.)

THE COURT: We left off at page 510.

MR. CHELANSKI: We will resume on page 578.

(Tape listening and reading continuing with page 578, going to page 611, then page 5 through 6, commencing again on page 9 through 10 and then page 16, page 57 through 58 and goes to page 85 to 86, page 94 and then 143, page 147, 157 through 158, page 301 through 302, page 311 and page 324.)

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

17

(Whereupon at 3:45 p.m. the tapes were stopped at page 324 with an objection by defense counsel.)

MR. SHANAHAN: I'd like to object to the tape on the basis that it is unintelligible.

THE COURT: Well, it is a little difficult to hear, however, we will leave that up to the Jury whether they can decide what the tapes say.

MR. SHANAHAN: I would also like to approach the bench with counsel, if I may.

THE COURT: Do you want the reporter?

MR. SHANAHAN: After.

(Whereupon counsel approached the bench and following this the proceedings continued at 4:00 p.m. and picked up with page 324 and carried on to 325, going to 332 through 333 and then to page 348, and page 357, then to page 372 through 373, then to page 396 through 399, to page 429 through page 431, to page 452, to page 476 through page 477 and then to page 490 through 494 and at 4:15 p.m. they stopped at page 494.)

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED. 18

THE COURT: You have to admit, there
one
has been only/ad so far. The Court stands
for a short recess.

(Whereupon, following a short recess,
the Court resumed at 4:30 p.m.)

THE COURT: Court resumes session. Mr.
Shanahan?

MR. SHANAHAN: Yes, Your Honor, at
this time I would like to move that the Court
Stenographer record what is heard on the
microphone, particularly or I should say for
the purpose of the unintelligible aspects,
which I think all would concede is intel-
ligible at times, and for the purpose of the
continuing motion that I have made, I would
like to ask that certain of these transcripts
should be transcribed by the Court Stenographer.
Now, in looking as to what remains to be heard,
I can't find anything specific that is
unintelligible, so of course that would be a
useless objection, but I do notice in reading
page 361, has underscore, which I don't think
is proper. I don't want to get away from the

TRANSCRIPT OF DENIAL OF APPELLANT McGRATH'S REQUEST
THAT ENTIRE TAPE OF SELECTED TAPES BE PLAYED.

19

issue before the Court, but I did notice that
in turning the pages.

THE COURT: I don't think I have page
361.

MR. SHANAHAN: It is about five from
the last page. Yes, it does.

THE COURT: The pages do not run in
order. Four from the last page.

(Whereupon Plaintiff's attorney reviewed
the document.)

MR. CHELANSKI: I don't know how that
got there, Your Honor, it's not even on my
copy. I can make another blank copy of that
page right away.

THE COURT: Well, I think it should be
done, don't you?

MR. SHANAHAN: Yes, Your Honor, I do.

MR. CHELANSKI: I can do that right
now, and ---

THE COURT: Is there anybody here that
can do that for you so that Mr. Shanahan can
continue with what he's saying?

MR. CHELANSKI: Yes.